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**The Lateran Pacts and the debates in the Italian
Constituent Assembly with reference to religious freedom,
and the consequences for religious minorities
(1946-1948)**

Huw Martin Thomas

**Submitted to the University of Wales
in fulfilment of the requirements for the
Degree of Doctor of Philosophy**

University of Wales Swansea

2005

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Summary

The thesis is a detailed study of the debates of the Italian Constituent Assembly on the question of the inclusion of the Lateran Pacts of 1929 and the constitutional and practical ramifications with regard to the condition of the religious minorities.

Section A briefly outlines the changes in the role of the papacy from the mid 19th century until the end of World War II, the emergence of political Catholicism and the significance of the Lateran Pacts. Religious freedom for Protestants over the same period is then discussed, focussing in particular on their legal position. This is followed by an analysis of Catholic religious freedom as established by the Catholic Church and of the relationship between the Vatican and the Christian Democrats.

In Section B the debates on the articles dealing with the inclusion of the Lateran Pacts and religious freedom for the minority religions are discussed. Draft article 5 of the Constitution is the basis for the analysis, the individual clauses of which have been treated separately. Methodologically, this was the most appropriate way of tackling the extremely complex issues linked to the various clauses.

In Section C, the most significant conclusions to emerge are the determination with which the Catholic deputies fought for the inclusion of the Pacts, frequently using religious arguments while ignoring juridical advice, and the Communist leadership's decision to vote with the Christian Democrats for inclusion of the Pacts. For the minority religions, the crucial factor in their continued oppression after the war, apart from the Communist's decision, was the lack of will in the Assembly to draw up clear guidelines that would allow for changes in the Fascist legislature that controlled the actions of the minority religions, thus ensuring that their struggle for religious freedom would continue.

Declaration and Statements

DECLARATION

This work has not previously been accepted in substance for any degree and is not being concurrently submitted in candidature for any degree.

Signed (candidate)

Date

STATEMENT 1

This thesis is the result of my own investigations, except where otherwise stated.

Other sources are acknowledged by footnotes giving explicit references. A bibliography is appended.

Signed (candidate)

Date

STATEMENT 2

I hereby give consent for my thesis, if accepted, to be available for photocopying and for inter-library loan, and for the title and summary to be made available to outside organisations.

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Date

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Acknowledgements

In the five years it has taken me to produce this thesis, I have undertaken research in some remarkable places and met some even more remarkable people. Most of these I hope to name below, but even to those I have omitted, I owe a huge debt of gratitude.

First and foremost, I would like to acknowledge the help, encouragement, support and (occasional) psychiatric assistance that I have received, whenever I have needed it, from my supervisor at the University of Wales, Swansea, Professor Gino Bedani. His unfailing belief in me has been constant throughout even the darkest moments. I would also like to thank my research colleagues Luca Paci and Isobel Williams for their much needed moral (and practical) support. Advice and assistance has also been gratefully received from Iain Glen in the Library and Information Centre at Swansea and the staff at the Bodleian Library in Oxford.

In Rome I would like to offer my thanks to Katharine Williams (Sister Assumpta) at the Pontificio Collegio Beda for her help in arranging my stay and to all the staff at the college for making me welcome, feeding me and let me use their library; to Paolo Evangelisti and all the staff at the Archivio della Camera dei Deputati for his guidance and useful contacts; all the staff at the Sturzo Institute, the Vatican library, the Archivio Centrale dello Stato and the library of the Lateran University. Thanks to all the staff at the library of the Waldensian Institute and especially at the Rome headquarters of the 7th Day Adventist Church for their continued support.

Last, but not least, I would like to acknowledge the support, encouragement and patience of my partner Deborah, and of my family and friends, to whom I am eternally grateful.

Introduction

There has been no detailed study, to my knowledge, of the debates as they were conducted at the Constituent Assembly on the question of the inclusion of the Lateran Pacts in the Italian Constitution, and of how their inclusion affected constitutional provisions on the broader issues relating to religious freedom in general, and religious minorities in particular.

In order to put the debates into context, I have taken as a starting point for the thesis the end of the period of temporal stability for the Catholic Church in the mid-nineteenth century. Beginning with the Albertine Statute of 1848, which was effectively the ‘lull before the storm’ of Italian unification, and led to the difficult period for the Holy See of the loss of its papal States, I will take the reader through the period of self-imposed isolation from the 1870’s, past the Church’s internal restructuring and centralisation policies, through to the Fascist collaboration that gave birth to the pivotal Lateran Pacts.

Throughout this same period I will examine the condition in which the minority churches found themselves and trace the effects of the rather inadequate legislation that regulated their activities. This is followed by an analysis of Catholic religious freedom as established by the unique juridical position of the Catholic Church, its policy of making concordats and Catholic social and political ideologies.

In the debates section (Section B of the thesis), the lion’s share of my analysis will be devoted to the debates on draft article 5, the core of which became articles 7 and 8 in the final approved articles of the Constitution. Arguments relating to the other important article in the Constitution relevant to our topic (draft article 14 which became final article 19) were also mostly covered in the debates on draft article 5, although some further discussion took place on draft article 14, which will also be dealt with towards the end of Section B. In other words, most of the debates leading to the eventual approval of all these articles was conducted around draft article 5.

The debates were not undertaken by topic or theme. Many topics and themes came up randomly throughout the course of the debates as and when any given speaker felt he had a point to make, sometimes with days or even weeks between two parts of the same debate. Thus the layout of the debates was very disorderly. Making sense of this disorder, as far as possible, for reasons of clarity, was my primary concern in laying out the sections of the thesis. This led to another problem:

putting order into the discussions, without unnecessary repetition, is not an easy task. Some repetition of topic is unavoidable simply because the themes and topics continually interlock, although when this does occur it will be a different aspect of the topic which is being treated.

I would like to make one further point regarding my research. In the autumn of 2002, an article appeared in the Guardian newspaper criticising Silvio Berlusconi's government for removing archive material from Italian state libraries that could be construed as 'sensitive' to the Holy See. The article was signed by a number of academics including Umberto Eco, who all agreed that it was not in the interests of 'transparency' and 'openness' to remove such documents and would hinder any subsequent academic research. When I arrived in Rome in January 2003, I saw evidence of the removal of this 'sensitive' material at first hand while working in the Archivio Centrale dello Stato. Fortunately, the missing files had already been consulted and published in various works which I subsequently discovered quite by accident. These files are referred to in Section A2 of the thesis.

SECTION A: ISSUES PRIOR TO THE DEBATES

A1 The Papacy in a changing world

(i) The Roman Question

The single most important event to affect the Catholic Church in the nineteenth century was the annexation of the Papal States (which stretched across Italy from Rome to Marche) to the Kingdom of Italy at the time of unification.¹ This became known as the Roman Question, the repercussions of which would last for almost a century and affect Church policy, Italian legislation and even the new Republican Constitution of 1948.

At the heart of the problem was the concept of sovereignty: since Unification, Vatican City had not had sovereign status. Up to the Risorgimento, the term 'Roman Question' had referred to the problem of the existence on Italian territory of another state at the head of which was the Pope. The issue assumed a more concrete political dimension after the events of 1859-1860, during which Marche and Umbria, previously belonging to the Vatican, were also annexed to the newly unified Kingdom of Italy. The Prime Minister of the time, Cavour, attempted to resolve the difficulties this action posed for Church/State relations: his deal involved the Pope ceding to Italy his remaining temporal powers in the form of the last two papal states of Rome and Lazio. In return he would receive guarantees of full independence to operate in his role as Head of the Catholic Church and an end to State interference in Church legislation. Not surprisingly, the deal was completely rejected by the Vatican.² However, Pius IX's refusal to cooperate made little difference to the unification process, and on 2nd October 1870 Rome and Lazio were annexed to Italy. The loss of the last two states meant the end of the Vatican's temporal power and the loss of territorial income that it had enjoyed for over a thousand years. Italian liberal opinion, on the other hand, considered this to be the liberation of the Church from a useless and anachronistic duty which had prevented it from dedicating itself fully to its spiritual magisterium. Not surprisingly, Pius IX and his successors interpreted the loss differently and effectively went into exile in the Vatican, not emerging until the conciliation of 1929. Having accepted the impossibility of negotiating with the Vatican on the matter, the Italian State established the independence and spiritual sovereignty of the Pope by an internal law (the Law of Guarantees – discussed in full

¹ See A.C. Jemolo, *Chiesa e Stato in Italia dalla unificazione ai giorni nostri*, Torino: Einaudi, 1977.

² For more detail see S.M. Marottoli, *La Santa Sede nel Diritto Internazionale*, www.studiocelentano.it (Thesis published on the Internet).

later). The law was unilateral and non-negotiable and was again rejected by the Pope.³

(ii) The centralisation of Papal authority

After the French Revolution, the republican mood that swept across Europe focussed the Vatican's attention on the defence of the traditional order while attacking liberalism, republicanism and socialism. During the pontificate of Pius IX (1846 - 78) and as a direct consequence of the Unification of Italy, the papacy came into greater focus as the organisational and spiritual centre of the Catholic faith. From this position Pius IX and his successors were able to redefine Catholic orthodoxy. Bolstered by his hostility to the unification of Italy in 1859 - 60, Pius IX rejected - notably in the 'Syllabus of Errors' published in 1864 - any suggestion that individualism and representative government could be in any way compatible with Christian teaching.⁴

The marginalisation of the Church by the liberal governments, coupled with the tendency towards secularisation, led to a desire in Vatican circles for centralization of Church authority in the bishops and, particularly, in the Pope himself. Yet alongside this greater centralisation came a more inclusive role for the Catholic laity: the appeal to the layman was effectively the Church sponsoring large scale organizations in which and through which the layman was called to actively support the Church's general policy.⁵

Formed during the 1874 Catholic Congress in Venice, the *Opera dei Congressi* was "a loose federation of parochial societies of committed laymen". One of its early tasks was "organizing political dissent on religious grounds" holding its main meetings at the yearly congresses.⁶ Its organisation mirrored that of the Church with parochial societies at grass roots level, regional and diocesan societies at intermediate level and a general standing committee which organised the annual meetings led by a president appointed by the Pope. Such dependence on the Church hierarchy was considered to be vital to ensure strict control of its work.⁷ Gradually through the late 19th century, some lay members of the Opera began to show signs of wanting more independence. Consequently, Pius X, fearing the radical reform

³ Marottoli, *La Santa Sede*, Chapter 2.1.

⁴ M. Conway, *Catholic Politics in Europe: 1918-1945*, London: Routledge, 1997, p.21.

⁵ G. Poggi, *Catholic Action in Italy: The Sociology of a Sponsored Organization*, Stanford: Stanford University Press, 1967, p. 11.

⁶ Poggi, *Catholic Action in Italy*, p. 16.

⁷ Ibid.

programme of the Christian democrat political movements and the heretical modernist tendencies of some of its leaders, dissolved the Opera shortly after 1903 and reorganised it into various associations more directly dependent on the hierarchy.⁸ The Vatican's insistence on exercising authority over its satellite organisations was an important factor in Eugenio Pacelli's (later Pius XII) redrafting of the Church's Code of Canon Law, published in 1917. The new Code was arranged in such a way as to ensure that future popes could control the Church from the Roman centre. Consequently, the papacy enjoyed unprecedented power over a huge amount of European, and especially Italian, public and private life well into the 20th century.

But despite its structural and organisational changes during the first thirty years of the twentieth century, the Church maintained its centuries-old hostility to democratic practices, remaining intolerant of internal and external debate.⁹

(iii) Catholic Action

One of the most important of the associations to emerge from the reorganisation of the *Opera dei Congressi* in 1903 was Catholic Action. Being much more firmly under the control of the Vatican than the *Opera dei Congressi* the new priorities bestowed on Catholic Action by the papacy (particularly during the inter war years under Pope Benedict XV) were more focussed on spirituality and proselytising than on politics.¹⁰

Pius XI had a more relaxed attitude to political involvement and this manifested itself in the structural changes he made to the association from the start of his papacy in 1922 (discussed in section iv). A key feature of this new structure of Catholic Action throughout the reign of Pius XI was an increase in the participation of laymen at the various coordinating levels. To facilitate this aim, Pius XI set up the Catholic University of Milan as the intellectual hub of the Italian Catholic World and of Catholic Action in particular.¹¹

Nothing changed in this regard in the new Catholic Action Statutes of January 1932, despite the crisis in relations between the Fascist government and the Holy See of 1930-31. The movement was still led by the lay-dominated Giunta

⁸ J.F. Pollard, *Italy* in T. Buchanan, & M. Conway, (Eds.) *Political Catholicism in Europe, 1918-1965*. Oxford: Clarendon Press, 1996, p. 79.

⁹ Conway, *Catholic Politics in Europe*, p. 99.

¹⁰ Conway, *Catholic Politics in Europe*, p. 43

¹¹ Pollard, *The Vatican and Italian Fascism*, p. 34

Centrale in Rome.¹² It was only when Cardinal Pacelli succeeded Pius XI as Pope in September 1939 that any major changes were made. With the outbreak of hostilities, Pius XII became concerned about discipline among its members and the effect any ensuing problems might have on the association. Another concern was the problem of the *ex-popolari* inside Catholic Action. Both problems were resolved in the Statute he approved in June 1940 which totally subordinated the more politically compromised of the lay leaders to the authority of a commission of Cardinals.¹³

The drive towards centralisation had almost reached its zenith. In taking control away from the lay element of the organisation, the Vatican was now in full command of all its forces, both lay and ecclesiastical, not only on a national level, but thanks to its concordats, also on a European level. And as a result of the protection afforded to Catholic Action by the Lateran Concordat, at the end of the war it was the biggest and most influential voluntary organisation, with offices in all 24,000 of Italy's Catholic parishes.¹⁴ Add to this the constant stream of politically aware and highly spiritual Catholics emerging from the University in Milan who would take prominent positions not only in Catholic Action but more importantly in its collateral political wing, the *Democrazia cristiana*, and one can begin to appreciate the extent and power of the Vatican-led political machine that emerged to secure the Holy See's hold on the country after the chaos of Fascism and the disastrous condition Italy found itself in at the end of the war.

In the new atmosphere of political freedom after the war, the Vatican felt the time was right to 'legitimize' Catholic Action again and promptly re-instated lay members to its chain of command, but with overall control remaining with the commission of Cardinals and, ultimately, the Pope.¹⁵

(iv) The emergence of political Catholicism

Although Catholic political development had originally been impeded by papal opposition to the unified Italian state, when the *Non expedit* was relaxed in 1905 Catholic deputies entered parliament for the first time.¹⁶ Catholic deputies elected to parliament thereafter were clearly divided between 'Christian democrats' and a group of mainly bourgeois deputies willing to collaborate with the Liberal and

¹² Ibid., p. 162

¹³ Ibid., p. 162. For more details on this period see Poggi, *Catholic Action in Italy*, p. 26 and Pollard, *The Vatican and Italian Fascism*, p. 191.

¹⁴ Pollard, *Italy* in Buchanan & Conway, *Political Catholicism in Europe*, p. 87.

¹⁵ Poggi, *Catholic Action in Italy*, p. 28.

¹⁶ Conway, *Catholic Politics in Europe*, p. 25.

conservative ruling élite.¹⁷ Despite the apparently relaxed stance of the Vatican towards the new phenomenon of Catholic politicians, Pollard suggests that the introduction of Catholics into Italian political life was a carefully controlled experiment, closely supervised by the local bishops and by the Pope himself. Guiding the opinions and actions of both the Catholic electorate and the Catholic deputies was the *Unione Elettorale*, one of Pius X's creations, born out of the re-organisation of the whole Italian Catholic movement between 1903 and 1905.¹⁸

Don Luigi Sturzo, founder of the *Partito popolare italiano* considered the *Unione Elettorale* to be a cynical manipulation of the Catholic vote for the benefit of Giolitti and as such was highly critical of it.¹⁹ It is thus evident that the policy of central papal primacy, considered by all the late nineteenth and early twentieth century popes to be essential to the stability and future of the Holy See, was a hindrance to politically motivated Catholics who did not subscribe to the Vatican line.

Catholic Action's structural stasis during the reign of Pius XI, belied a whole raft of organisational, ideological and diplomatic changes that took place during the same period. The first two were relatively straightforward to achieve, in that the Vatican had total control over them, whereas diplomacy was a much more sensitive affair, particularly as a result of the politicisation of Catholic Action. Militant factions of Catholic Action were not afraid to criticise Mussolini's government; this at a time when negotiations were under way with the Fascists to resolve the Roman Question. The Church struggled at times to keep the lid on these militants while assuring the government that it was fully committed to the Lateran Pacts. Ironically the Pacts gave Catholic Action a greater level of independence than it had ever had – the full protection of the Church and guarantees from the Fascists to let it operate freely – officially only on a spiritual and moral plane. But this freedom allowed it to secretly formulate its plans for the post-Fascist political future of Italy.

The Catholic political activists of the 1930's found new alliances with forces to the left and right in the fight against Fascism. During this period they also became increasingly convinced that only Catholicism offered real solutions to the many

¹⁷ Ibid., pp. 26-7. As Conway points out, it is worth remembering that before 1914 and in many cases during the 1920's and 1930's the term 'christian democrat' was used to express the populist nature of these new political movements and did not necessarily signify adherence to the principles of a democratic political system, as Pope Leo XIII was keen to stress in his encyclical *Graves de comuni* of 1901.

¹⁸ Pollard, *The Vatican and Italian Fascism*, p. 18.

¹⁹ Ibid., p. 19.

problems facing both Italy and Europe.²⁰ In fact, European Catholic politics during the inter-war period reflected the trends of Italian Catholic politics, both remaining focused on two central themes: the protection of the Church and its institutions against its real or imagined enemies, and the instigation of what it considered to be a distinctive manifesto of Catholic-inspired policies based principally on papal encyclicals.²¹

(v) The Partito Popolare

From the time of Pius IX, the Vatican had encouraged a distrust of social democracy as a precursor of socialism, and hence of communism. Consequently, the Vatican's attitude to political parties was coloured by how they stood in relation to the communist threat. Therefore, after the first World War the emergence of a solidly democratically-inspired political Catholicism did little to attract the support of the papacy.²² This can be clearly seen in the Vatican's attitude to Don Luigi Sturzo's *Partito popolare* formed in 1919: its antipathy towards the Ppi and its Liberal bedfellows was exacerbated by the election of Pius XI in February 1922.²³

In February 1922 and again in July of that year, amid the deepening parliamentary crisis of the Liberal State, the King asked Filippo Meda, veteran Catholic politician and leader of the parliamentary caucus of the Ppi, to take over as Prime Minister. To Sturzo's dismay, Meda refused, unwilling to take upon himself the responsibilities of the office. As a consequence his party was deprived of the opportunity to play an important role in politics, but more importantly, squandered the last real chance to preserve Italian democracy. The resulting parliamentary crisis of October 1922 led to the Fascist march on Rome at the end of that month. The restoration of political stability was deemed to be crucial by the Vatican and thus the Ppi were pressurized into supporting the government formed by Mussolini at the beginning of November.²⁴

However the Vatican had underestimated the Ppi's strong desire for independence from Vatican directives. And it was far from isolated in the Catholic world: it had the support of almost all the Catholic unions, the press, the peasant

²⁰ Conway, *Catholic Politics in Europe*, p. 48.

²¹ Ibid, p. 100. See also section A3 of this thesis.

²² Conway, *Catholic Politics in Europe*, p. 40

²³ Pollard, *Italy* in Buchanan & Conway, *Political Catholicism in Europe*, p. 81

²⁴ Ibid., p. 81

leagues and the majority of the parochial clergy. The Vatican had in fact, since the emergence of the Ppi, lost control over most of the old Catholic movement.²⁵ Nevertheless, the fortunes of the Ppi were linked inextricably to the attitudes to it of Popes Benedict XV and his successor, Pius XI. Benedict was supportive of the formation of the party, assuming he would be able to use it to further his own political agenda. Pius XI was simply suspicious of it, particularly since, by the start of his reign in 1922, Don Sturzo's party was displaying a dangerous disregard for the views of the Holy See. Pius was also concerned about some of its social and economic policies, while being himself attracted to a 'strong-man' strategy for defeating bolshevism. The advent of Mussolini was thus both timely and auspicious in the eyes of the Pope who expected to be well rewarded for helping to smooth Mussolini's path to power. But it was a two-way deal and they both held the same bargaining chip – Don Sturzo's Ppi – which was immediately deemed expendable by the Vatican.

When Mussolini began to put pressure on the Ppi in the summer of 1923 the Vatican had a clear choice to make: to be politically neutral – thus assuring the independence of the Ppi, or support Mussolini, necessitating the emasculation of the Ppi. It chose the latter partly due to Mussolini's threat of violence against Catholic clergy and institutions, but also due to a shrewd calculation: at least in the short term, Fascism offered protection against the Communist threat, social peace and political stability, and most importantly an enormous amelioration of the Church's condition compared to its experiences under the Liberal governments.²⁶

Although Pius XI, like his successor Pius XII, was keen to protect the Church from what he perceived to be the evils of democratism, communism, socialism, secularism and ideally even fascism, support for the latter was, in the circumstances, necessary to protect the Church's longer-term interests. To this end, Pius XI discouraged, ignored and rejected Don Sturzo's Ppi, facilitating its eventual dissolution. Ostricised by both the Fascists and the Catholic Church, the eventual collapse of the Ppi was inevitable and essential for the subsequent triumph of Mussolini and Fascism.

In the face of Fascist harassment Don Sturzo went into exile in New York and Alcide De Gasperi chose the same path but was arrested, imprisoned but

²⁵ Pollard, *The Vatican and Italian Fascism*, p. 21

²⁶ Ibid., p.29.

eventually released at the request of the Vatican.²⁷ In 1929, the year of the Lateran Pacts, Alcide De Gasperi, on his release from prison, was given a poorly paid post in the Vatican library. But why was this? Was he being held in reserve? Was the Vatican already making preparations for the post-Fascist political landscape? With its customary eye to the future, the Vatican was already building links with Europe's fascist dictators in order to strengthen its position at the heart of European politics. Now the gap between its political and spiritual goals was really narrowing: transforming the Church into an apostolic organisation committed to the re-christianisation of modern society became the call-to-arms of both the clergy and the new generation of Catholic political activists being clandestinely schooled in the ranks of Catholic Action.²⁸ It would not be long before the 'laicist' tradition of Sturzo and the *popolari* would be lost to this new generation of Catholic activists.

(vi) The Lateran Pacts

The advent of Fascism not only usurped any hope of political democracy in Italy, it also caused major problems for the Catholic Church. From as early as 1922 it found itself the victim of repression by the Fascist police with the main target being the Catholic Action youth groups and sports associations which were perceived to be in competition with the Fascist *Balilla* (youth organisations). Given the forthright nature of the legislation being pushed through Parliament to establish the *Balilla*, it was the very survival of Catholic youth groups that was a major concern for Pius XI. This goes some way to explain his decision to take the initiative in seeking a definitive solution of the Roman Question in the spring of 1926.²⁹

Reconciliation of the Roman Question was for Pius XI, as for his second-in-command Gasparri, a major objective of his reign.³⁰ restoring some kind of temporal power to the Catholic Church would add a sense of legitimacy to its political ambitions. While negotiations for the Lateran Pacts were under way, Pius XI declared that he wanted a Treaty which would accept for the Holy See a true, proper and real territorial sovereignty, something which he considered to be self-evidently necessary and due to an institution which cannot be subject to any earthly sovereignty.³¹

²⁷ Pollard confirms this action by the Vatican in *ibid.*, p. 49.

²⁸ Conway, *Catholic Politics in Europe*, p. 40.

²⁹ Pollard, *The Vatican and Italian Fascism*, p. 38.

³⁰ *Ibid.*, p. 23.

³¹ Pius XI, *Discorsi*, 1929-1933, II, Città del Vaticano 1985, p.9.

This theme was taken up in a letter from Pius XI to Cardinal Gasparri dated 30th May 1929, a matter of days after the Pacts had been ratified:

Anche nel Concordato sono in presenza, se non due Stati, certissimamente due sovranità pienamente tali, cioè pienamente perfette, ciascuna nel suo ordine, ordine necessariamente determinato dal rispettivo fine, dove è appena d'uopo soggiungere che la oggettiva dignità dei fini, determina non meno oggettivamente e necessariamente l'assoluta superiorità della Chiesa.³²

The concept of Church superiority over the State³³, which from a Catholic perspective goes back centuries but was 'legitimised' by the 1929 Pacts according to the Church's interpretation of them, is one of the elements of Church/State relations under Fascism criticised vehemently by Jemolo. Jemolo denounces what he calls the 'conditioning of our time', in other words, the limits imposed by the authoritarian regime on one's freedom to challenge opinions; the statement that lacks critical debate; and the prevalence of a tendency that favours the predominance of the rights of the Church over those of the State (i.e. canon law over ecclesiastical law).³⁴

With his part in the Lateran negotiations, Mussolini had only compounded these issues: he had made huge concessions to the Vatican that no Liberal government would have even contemplated. This ties in with Pollard's assessment of the Vatican's manipulation of the Fascist government to resolve the 'Roman Question' as 'opportunistic'.³⁵ Hebblethwaite agrees: the Pacts were signed with 'the Italian State' not Fascism.³⁶ The Vatican simply used Fascism to guarantee, by means of the Pacts, its future spiritual, juridical, financial and political stability. For all its bullying and bravado, Fascism had no response to the astuteness of the Catholic Church, which negotiated for itself a position of strength which was massively underestimated by Mussolini.

Even so, when the Vatican insisted on a clause banning excommunicated priests from holding public office it was fiercely resisted by the government, and its proposals on marriage required such drastic amendments to Italian matrimonial law

³² F. Pacelli, *Diario della Conciliazione (con verbali e appendice di documenti)*, Città del Vaticano, Libreria Editrice Vaticana: 1959, p. 550.

³³ This was an extremely important concept which, during the 1930's and 1940's, had become embedded in the Italian psyche.

³⁴ C. Mirabelli, *L'appartenenza confessionale*, Padova, Cedam, 1975, p.80. Gianni Long also considered Jemolo's contribution to reawakening interest in the debate on both aspects of law dealing with Church/State relations to be significant, even though the debate had little exposure. See G. Long, *Alle origini del pluralismo confessionale: Il dibattito sulla libertà religiosa nell'età della Costituente* Bologna, Il Mulino: 1990, pp. 312-3.

³⁵ Pollard, *The Vatican and Italian Fascism*, pp. 57-8.

³⁶ P. Hebblethwaite, *Paul VI: The first modern Pope*, London, Harper-Collins: 1993, p. 189.

that Mussolini fought them until the last moment.³⁷ But the most difficult problem, and one that nearly shipwrecked the negotiations on at least two occasions, was the question of the future of Catholic Action and in particular its youth organisations.³⁸ Indeed, even the final version of the Pacts failed to resolve this issue, and so from the moment the Pacts were signed in February 1929, there followed two years of tension between the Fascist government and Catholic Action, the most prominent of the remaining religious organisations with any influence. There was constant bickering over interpretations of the Lateran Pacts and a stream of accusations and denials regarding the political orientation and activity of the organisation.

Despite the enormous impact the Pacts were to have on Church/State relations, the negotiations themselves had been shrouded in secrecy.³⁹ It appeared that even the Pope harboured doubts and concerns right up to the last minute. Only a very restricted circle was aware of the negotiating process: the chief negotiators for the Lateran Pacts were, for Italy, the lawyer and Consigliere di Stato, Domenico Barone (whom Mussolini considered to be 'a faithful Fascist') and for the Holy See, Francesco Pacelli, brother of Mons. Eugenio Pacelli, later Cardinal Secretary of State under Pius XI and then Pope, Mons. Borgoncini-Duca, Secretary for Extraordinary Ecclesiastical Affairs and later first Nuncio in Italy, and his deputy Mons. Pizzardo.⁴⁰ It was, according to Jemolo, a surprise to the Italian people and apparently, even to the foreign ministers of other countries when the signing of the Pacts was announced on 11th February 1929.⁴¹ Even those working in the Secretariat of State, like Monsignor Giovanni Battista Montini, the future Pope Paul VI, employed at the time as a junior *minutante* or clerk, did not hear about the negotiations until the beginning of 1929.

³⁷ For details on this, the biggest stumbling block the negotiators faced, see Pollard, *The Vatican and Italian Fascism*, pp. 67-70.

³⁸ *Ibid.*, p. 44.

³⁹ For various accounts of the sequence of events that led to the signing of the Lateran Pacts in 1929, see: Jemolo, *Chiesa e Stato in Italia*, pp. 225-228; D. Veneruso, *Il seme della pace. La cultura cattolica e il nazionalimperialismo tra le due guerre*, Roma, Studium, 1987, pp. 91ff; Pio XI, *Discorsi*, 1929-1933, Vol. I, Città del Vaticano 1985, p. 647; A. Giovagnoli, *La cultura democristiana: La Chiesa cattolica e identità italiana (1918-1948)* Bari, Laterza: 1991, p. 41 and especially Francesco Pacelli, *Diario della Conciliazione*. For evidence that the negotiations that led to the Lateran Pacts had begun with pre-Fascist Liberal governments, see F. Margiotta Broglio, *Italia e Santa Sede dalla grande guerra alla Conciliazione*, Roma-Bari, Laterza, 1966.

⁴⁰ Pollard, *The Vatican and Italian Fascism*, p. 48.

⁴¹ Jemolo, *Chiesa e Stato in Italia*, p. 229.

The Lateran Pacts were passed as law (no. 810) on 27th May 1929.⁴² Jemolo claims that in the Lateran Accords the Vatican saw a charter, that of the political influence of the papacy and of foreign Catholic parties, put at the service of future Italian foreign and colonial policy, for which the Vatican had high hopes. Among the political classes there was the impression that the Pacts were significant not for what they eradicated from the past, but for the opportunities they presented for the future.⁴³ But the great triumph of the Lateran Pacts – at least in the eyes of those who signed it – was the resolution of the Roman Question, bringing peace and reconciliation and even the re-establishment of diplomatic relations between two very different kinds of international body – the Kingdom of Italy and the Holy See. The latter was at best an anomaly in the international order, for although the Papacy had been relieved of its territorial, ‘temporal’ power during unification, in its ensuing conflict with the Italian State it had succeeded in retaining the attributes of sovereignty in the eyes of the other European powers.⁴⁴ This was due mainly to the enormous spiritual and moral authority it enjoyed as a result of its position at the head of the universal Catholic Church.⁴⁵ Indeed, the Lateran Pacts gave rise to what became known as the Dualist Theory: the principle of this theory is considered to be the basic premise of the Lateran Treaty, by which the Holy See considers and affirms itself to be the holder of a dual international legal personality; that is, as the supreme institution of the Catholic Church and as sovereign of its own state.⁴⁶

For the ratification of the Pacts only two days of parliamentary ‘deliberations’ were allocated. Within five days the Pacts were ratified. In the discussions the Treaty was given prominence since it constituted a tangible success for the government, while the Concordat, which had reinvested the Church with long lost and even un hoped-for legislative powers, was, naturally, given less parliamentary time for debate.⁴⁷ The only speech opposing the Concordat was made by Benedetto Croce. With, surprisingly, no objection to the conciliation as a whole and the Treaty in particular, he concentrated his attack on the Concordat. With the Concordat, the State had totally abandoned a previously secular tradition which, he

⁴² See Pollard, *The Vatican and Italian Fascism* for the text of the Treaty, the Concordat and the Financial Settlement in English. The original can be found in *Raccolta Ufficiale delle Leggi e dei Decreti del Regno d'Italia* (a cura del) Ministero per la Giustizia, Rome, pp. 5468-5493.

⁴³ Jemolo, *Chiesa e Stato in Italia*, p. 231.

⁴⁴ See Mario Falco: *The legal position of the Holy See before and after the Lateran Agreements* (Two lectures delivered in the University of Oxford by the author) translated by A.H.Campbell, London: 1935.

⁴⁵ Pollard, *The Vatican and Italian Fascism*, p.79.

⁴⁶ Marottoli, *La Santa Sede nel Diritto Internazionale*, Ch. 1.6.

⁴⁷ Jemolo, *Chiesa e Stato in Italia*, pp. 239-241.

claimed would re-ignite squabbles and sterile arguments over issues long-considered dead and buried.⁴⁸

I would take issue with Pollard's comment that "there was nothing very special or unusual about the Italian Concordat of 1929, except for the fact that whereas all the others had been concluded with more or less democratic regimes, this one had been agreed with a Fascist dictatorship."⁴⁹ To the Holy See it was a landmark Concordat, bringing into ecclesiastical jurisdiction key areas of Italian legislature, such as the employability of apostate priests in the public sector, important aspects of matrimonial law and religious education in schools. Thanks to the Treaty and its reincarnation as a temporal sovereign entity, the Holy See was able to defend and fight for implementation of the terms of the Concordat in a much more vigorous way than it could have before.

But in 1929, support for the Pacts was far from unanimous even in Catholic circles. Giovanni Battista Montini, as spiritual director of FUCI (*Federazione universitaria cattolica italiana*) had considerable influence over its members and was to a large extent responsible for the strong reservations they expressed about the Pacts at their 1929 Congress. Although, like many others close to the Vatican hierarchy, he did not officially know that negotiations for the Pacts were taking place until late in the process, Montini had been voicing doubts about the value of a concordat even before the negotiations were completed – 'If the liberty of the Pope cannot be guaranteed by the strong faith of a free people, and especially by the Italian people, then no territory and no treaty will be able to do so.'⁵⁰

The Pope, on the other hand was overjoyed by the agreement. In a meeting with students and professors of the University of the Sacred Heart on February 13th 1929, Pius XI referred to Mussolini as "un uomo come quello che la Provvidenza Ci

⁴⁸ Ibid., pp.246-7. Jemolo's own position on the Concordat was unique. He made a clear distinction between his preferred outcome and the route to take should that outcome not be realised. Ideally he would have preferred a Church that did not want Concordats, but liberty for all, a Church which renounced its mediaeval structures and the rigid division of the social classes. In exchange the State would commit itself to expanding the boundaries of Vatican City State and improve the deplorable economic conditions of the diocesan priests by means of an additional tax on those who declare themselves members of the Catholic Church (A.C. Jemolo, *Per la pace religiosa d'Italia*, Firenze, La Nuova Italia, 1944, p.38-9). This proposal was similar to that actually put in place by the revision of the Concordat in 1984. The latter, however, was not based on an additional tax paid by the members of a given confession, but on a share between State, Catholic Church and other churches who signed up to the scheme (*Assemblea di Dio in Italia* and *Unione delle chiese avventiste del 7° giorno*) of a predetermined amount of the tax on one's personal income, based on one's personal choice declared on one's tax return. Jemolo knew that his vision was unrealistic, but in fact the position of the Catholic Church was even more entrenched than even Jemolo could have imagined: the Church gave way on neither the Concordat nor on anything else.

⁴⁹ Pollard, *The Vatican and Italian Fascism*, p. 4.

⁵⁰ Cited in Pollard, *The Vatican and Italian Fascism*, p. 54.

ha fatto incontrare” and to the Concordat as “certo tra i migliori che si sono fin qua fatti; ed è con profonda compiacenza che crediamo di avere con esso ridato Dio all’Italia e l’Italia a Dio.”⁵¹ Mussolini’s reaction to the Treaty gave a different interpretation. In a speech he gave to the Italian parliament on May 13th 1929, he said:

Nello Stato la Chiesa non è sovrana e non è nemmeno libera . . .
Non abbiamo risuscitato il potere temporale dei Papi: lo abbiamo sepolto . . .
gli abbiamo lasciato tanto territorio quanto bastasse per seppelirne il
cadavere.⁵²

In response to the Duce’s speech was a letter⁵³ from the Pope to Cardinal Gasparri dated 30th May 1929 of which the following are extracts:

‘Stato cattolico’, si dice e si ripete, ma ‘Stato fascista’; ne prendiamo atto senza speciali difficoltà, anzi volentieri, giacché ciò vuol indubbiamente dire che lo Stato fascista, tanto nell’ordine delle idee e delle dottrine quanto in ordine alla pratica azione, nulla vuol ammettere che non s’accordi con la dottrina e con la pratica cattolica; senza di che Stato cattolico non sarebbe nè non potrebbe esistere.⁵⁴

The quest to make Italy a Catholic State was dear to Pius XI and this meant the subordination of all other religions in Italy⁵⁵. Even though other religions were ‘permitted’ or ‘admitted’ or ‘tolerated’, only Roman Catholicism was officially recognised by the State as laid down in Article 1 of the Treaty.

The chirograph ended with a series of *prises de position* regarding the interpretation of the Lateran Pacts. It was not true, declared the Pope, that the Concordat had reserved to the State the right to veto ecclesiastical appointments. It was not true that ecclesiastical organisations had to apply to the State for legal recognition. In particular, the idea that the Treaty and the Concordat could be separated, that the one could remain effective while the other lapsed, was inadmissible:

teniamo . . . a ricordare e dichiarare che secondo i patti sottoscritti il Trattato non è il solo che non può più essere oggetto di discussione: o per spiegarci meglio, che Trattato e Concordato, secondo la lettera e lo spirito loro . . .

⁵¹ Cited in Jemolo, *Chiesa e Stato in Italia*, p.233.

⁵² Ibid., p. 234.

⁵³ Cited in full in Francesco Pacelli’s *Diario della Conciliazione* (Appendix XLII – *Lettera del Santo Padre al Cardinale Gasparri*, 30 maggio 1929).

⁵⁴ Ibid., p.554.

⁵⁵ Discussed more fully in Section A2 (iii) of this thesis.

sono l'uno complemento necessario dell'altro e l'uno dall'altro inseparabile e inscindibile.

Ne viene che *simul stabant* oppure *simul cadent*; anche se dovesse per conseguenza cadere la 'Città del Vaticano' col relativo Stato.⁵⁶

This comment shows how important the Lateran Pacts were to the Church in 1929, and how their importance must have grown by 1946 with the onset of the new democratic Italy and the uncertainties the new democracy brought with it for the Vatican.

Mussolini's parliamentary attack on the Holy See had given Pius XI the opportunity to reiterate in vigorous language the most radical historical affirmations of the Church's pre-eminence, to clearly delineate the Holy See's interpretation of certain passages in the Concordat, and above all to enunciate his thesis on the indissolubility of the unity of the Treaty and the Concordat.⁵⁷ The Pope's intransigence on the matter of the Pacts stems from a deep-rooted desire to prove to the world that the Holy See was now truly independent of Italy.⁵⁸ This intransigence, encountering at least as much obstinacy and bravado from Mussolini, led Church and State into a crisis between 1930 and 1931 which markedly changed the dynamic of their relationship, although according to Jemolo it remained, on the whole, cordial.⁵⁹ But the question of the Holy See's independence as a result of the resolution of the Roman Question, has generated its own polemic: was the self-inflicted isolation of the late 19th and early 20th century Popes as damaging a problem as the Church would like us to think? Jemolo points out that there was general scepticism with regard to the Holy See and a Fascist Government settling the Roman Question, which he claims was "a grievance which all knew to be without substance."⁶⁰ Scoppola, on the other hand, argues that the Pacts bridged the divide between Church and State that had opened up during the Risorgimento.⁶¹

Pallieri throws the cat among the pigeons by raising doubts as to whether the Pacts actually solved the Roman Question at all when both participating sides put such diametrically opposing interpretations on them. He argues that to understand

⁵⁶ Pacelli, *Diario della Conciliazione*, p.556.

⁵⁷ Jemolo, *Chiesa e Stato in Italia*, p. 236.

⁵⁸ Pollard, *The Vatican and Italian Fascism*, p. 160.

⁵⁹ Jemolo, *Chiesa e Stato in Italia*, p. 270. For information on the crisis of 1930-1931 see Poggi, *Catholic Action in Italy*, pp.25-30, Jemolo, *Chiesa e Stato in Italia*, pp.250-258 and Pollard, *The Vatican and Italian Fascism*. For analysis of how leadership changes on both sides were to have a bearing on the outcome of the crisis, see Pollard, *The Vatican and Italian Fascism* pp.76, 134-5, 153 & 161.

⁶⁰ For more see Jemolo, *Chiesa e Stato in Italia*, pp. 226-228.

⁶¹ Scoppola, *La repubblica dei partiti*, p. 158.

such diverse analyses one must go back and examine the historical events that led to the fall of the Papal States in 1870. The problem arose, he explains, from the fact that the soldiers of the Italian State did not actually set foot inside St. Peter's or any building within the confines of the Vatican itself. As the Vatican claimed, the troops did not enter because the new Italian State respected the sovereignty of the Vatican which, it claimed, continued to exist even after the annexation of the Papal States. However, between 1870 and 1929 the Holy See did not have sovereignty over the Vatican, which was itself much smaller than the State of Vatican City that emerged following the Lateran Pacts. Moreover, the Italian State did not see the need to encroach on the Vatican itself to impose State sovereignty over it, since all that Italy had allowed was *de facto* extra-territoriality – like the status of an embassy.⁶²

This non-invasion of the Vatican is the root of the polemic over the Lateran Pacts: according to the Holy See, the Treaty only served to reaffirm its sovereignty, whereas the State considered that Vatican sovereignty was created by the Treaty.⁶³ Pallieri agrees with the Holy See's argument on this point:

Le truppe italiane si astennero dal penetrare nella residenza del Pontefice non tanto perché ritenessero inutile ai fini della occupazione, quanto piuttosto per reverenza o per timore per le conseguenze che il fatto avrebbe provocato; perché comunque, se debellate erano le armi, tutt'altro che diminuita era la autorità del Pontefice.⁶⁴

During the years of the liberal governments, Pallieri notes that at no time did the Holy See make official complaints to the various governments regarding its lack of sovereign status: presumably it was biding its time until more favourable circumstances emerged.

When Mussolini came to power, the favourable circumstances came with him. The Church immediately became more vociferous on the issue of the incomplete and ineffectual occupation of Vatican territory and this became one of the fundamental premises on which the Pacts were negotiated. The Pacts, according to Pallieri, did not resolve the Roman Question but rather allowed both sides the opportunity to emerge from a distasteful diplomatic *impasse* with a degree of honour – even though none of the causes of the original dispute had actually been resolved.⁶⁵

Questions have in fact been raised regarding the validity of the Holy See's

⁶² I am indebted to Professor John Pollard for this information.

⁶³ G.B. Pallieri, *La Sovranità Temporale della Santa Sede e i Trattati del Laterano* in *Chiesa e Stato*, Vol. II, Studi Giuridici, Milano, Unione Tipografica, 1939, p. 5.

⁶⁴ Pallieri, *La sovranità Temporale della Santa Sede*, p. 6.

⁶⁵ Ibid., pp. 8-9.

legal status at the time of the signing of the Pacts. This could be yet another reason for delaying negotiations throughout the liberal years in anticipation of a more sympathetic government. Professor Arangio-Ruiz, the eminent constitutionalist, stated in 1929 that

per la conclusione del Trattato bastava che la Santa Sede fosse persona nel diritto interno italiano; non era necessario fosse allora persona giuridica internazionale.⁶⁶

Ruffini argues that the Holy See should have been a ‘persona giuridica internazionale’ when the Pacts were signed, but only became such *after* the Treaty had been signed, although he and other law experts of the day were not convinced by Arangio-Ruiz’s argument:

non possiamo comprendere che un vero trattato internazionale possa conchiudersi fra uno soggetto o persona di diritto internazionale ed un soggetto o persona di semplice diritto interno, che acquisti il carattere internazionale e sovrano soltanto al momento della ratifica del Trattato medesimo.⁶⁷

In other words the Vatican, prior to and during the negotiations for the Pacts, did not have sufficient legal status (i.e. was only a ‘persona di semplice diritto interno’) to enter into and undertake such negotiations. And as for Vatican City State the fact that it did not exist prior to the signing of the Pacts is evident from the fact that the state only came into being as a result of the Lateran Treaty.

(vii) After Fascism

A number of factors ensured that the Church would emerge from the war relatively unscathed and as the only national institution remaining intact and able to give guidance on the country’s choice of political leadership. As Fascism moved closer to Nazism, the Catholic Church chose to adopt a more cautious stance with Mussolini’s regime; early in the war the Church’s persistent appeals for peace and its neutral position had helped ease from the ‘social memory’ of Italians the fact that it had openly encouraged Fascist intervention in Ethiopia and Spain; Catholics participated in the Resistance movement and there was the Church’s assistance, albeit arguably sporadic, for Jews and political offenders; the organizational resources offered by Ac

⁶⁶ Arangio-Ruiz, *La Città del Vaticano*, in “*Rivista di diritto pubblico*”, 1929, fasc. VI, from p.600.

⁶⁷ F. Ruffini, *Relazioni tra Stato e Chiesa: lineamenti storici e sistematici*, Bologna, Il Mulino, 1974, p. 196.

to the Christian Democrat Party gave it a huge advantage over other parties that had been effectively shut down under Fascism; the post-war constitutional crisis in Italy, the disastrous state the country was in and the concept of Church superiority over the State that had been drip-fed into the Italian psyche dissuaded political parties, especially of the Left, from demanding that the Church pay the price for its support of Fascism; the traditional ‘moderate’ political parties in Italy had been thoroughly compromised with the Fascist regime leaving them very weak when the regime broke down, thus leaving the door open for the Dc party to present itself as the new ‘moderate’ party; and finally there was the Church’s ability to overcome crises, to give of its best in difficult situations, to appear as a moral force of the first magnitude in the face of social and political upheaval.⁶⁸

Giovagnoli claims that the Church hierarchy was itself surprised by the Church’s post-war esteem and ensuing status. He talks of an “unexpected revival of the influence of the Church in Italian society, in spite of its support of Fascism.”⁶⁹

Such a comment seems to me to be either misguided or a little too modest an analysis of an organisation which had been steadily planning for such an opportunity since unification. Centralization of papal authority had been achieved and furthermore, both Pius XI and Pius XII had openly expressed the desire that Italy should be governed within a framework of Catholic principles.

The Lateran Pacts had secured for the Church a juridical status that was at least on a par with, if not superior to, state legislature. This came principally from the concept, as championed by Giuseppe Dossetti in the Constituent Assembly, of the Church as an independent and sovereign entity – an ‘ordinamento originario’ – the legal system of which is unique, and not derived from that of any other state. Effectively, as a result of the Lateran Pacts, and the creation of Vatican City State in 1929, the Vatican was considered in international law as a sovereign and independent state.

In relation to the position of the Church, very little changed under the new Republican Constitution simply because the very same Pacts were ratified by the Constituent Assembly (i.e. by their inclusion within the body of the Constitution) and state laws remained largely untouched for at least two decades thereafter.

⁶⁸ Poggi, *Catholic Action in Italy*, p. 27-8.

⁶⁹ A. Giovagnoli, *Il partito italiano: La Democrazia Cristiana dal 1942 al 1994*, Roma, Laterza: 1996, p. 28.

One cannot ignore the influence of Pius XII in helping the Church to emerge from the ravages of war in Italy with such an elevated status. The Church had responded to a widespread identity crisis within Italian society during the demise of Fascism: particularly in Rome, but also elsewhere, the charismatic figure of the Pope became the substitute for the Duce.⁷⁰ Pacelli, despite being accused of being weak and ineffectual in his dealings with his own people as Secretary of State, as Pope was a very effective strategist. The main trait in his strategy was authority: in the film *Pastor Angelicus* (1942), he is presented as the supreme leader, a more authentic version of Mussolini.⁷¹ For his part in conceiving and stage-managing the idea of Pius XII as 'The Angelic Shepherd', the Pope nominated Luigi Gedda, then President of G.I.A.C., *Commendatore* of San Gregorio.⁷² Gedda had an unusually close relationship with the Pope, and was to be instrumental in delivering the landslide victories enjoyed by the Dc party from 1946 to 1948.

This relationship developed due to the close links between the Holy See and the leadership of Catholic Action. The significance of the internal organizational expansion of Ac (set in motion by a direct request of the Pope before the end of the war)⁷³ has been correctly noted by the Marxist historian Candeloro:

the Church . . . has sought above all to strengthen Catholic Action, to make it into an organization that would be able . . . to stimulate and control the political, labour and economic activities of the Italian Catholics; to organise their activity of propaganda and penetration into all social milieus, and the watch they keep on the press, the theatre, the film, the radio and sports . . . Beginning in 1944, ACI began to extend its activity to various spheres from which it had been barred during Fascism, both directly and through a series of dependent, coordinated and adherent organizations. It thus seeks to penetrate into all fields and to reach, through a variety of methods, the various strata of the population.⁷⁴

The crisis of 1931 had proved to Pius XI and his successor that there were limitations to their joint goals of clericalisation and confessionalism under the Fascist Regime, despite the fact that under that same regime the Lateran Pacts had established the basis of a clerical, confessional state. It was only after the collapse of Fascism, and with the emergence of a Catholic 'ruling class' that their dream would come to fruition between the late 1940's, and early 1960's.

⁷⁰ Scoppola, *La repubblica dei partiti*, p. 100.

⁷¹ McCarthy, *The Crisis of the Italian State: From the origins of the Cold War to the Fall of Berlusconi and Beyond*, London: Macmillan, 1995, p.23.

⁷² C. Falconi, *Gedda e l'Azione cattolica*, Firenze, Parenti: 1958, p. 296.

⁷³ See Poggi, *Catholic Action in Italy*, p. 190.

⁷⁴ Cited in Poggi, *Catholic Action in Italy*, p. 189.

A2) Religious freedom for Protestants

(i) The legal position of protestant denominations prior to Fascism

The one aspect of the minority religions' legal relationship with the State that remained constant throughout the nineteenth century was the total lack of uniformity in the relevant legislature with little desire to deal with the problem at a national level even after unification.⁷⁵ In fact, the relationship between each minority religion and the State was largely based on its own attempts to establish a position as far as possible in line with its own doctrines, or at least on attempts to use its own specific criteria to adapt itself to particular situations determined by state laws.⁷⁶ This difficulty in adopting any kind of uniform approach to dealing with the minority religious groups was further hampered by their demography and by the fact that they consisted of little more than 1% of the population. The Waldensians (or Valdesi) had the most clearly defined *locus*, concentrated mainly in the Val d'Aosta region of Italy. Other groups such as the Pentecostals, the YMCA, the Salvation Army and the 7th Day Adventists were scattered right across the peninsula, with small groups of each denomination being particularly active in the poorer regions of the South.

Falzone undertakes a useful examination of the legal status of the minority religions and gives examples from old Italian constitutions and other ecclesiastical legislation. Article 1 of the Piedmontese civil code (20th June 1837) stated: "*La religione cattolica apostolica e romana è la sola religione dello Stato. Gli altri culti attualmente esistenti nello Stato sono semplicemente tollerati secondo gli usi e i regolamenti speciali che li riguardano.*"⁷⁷ An amendment to the Constitution of Sicily conceded by Pius IX on July 1st 1848 stated that "*la professione della religione cattolica era condizione necessaria per il godimento dei diritti politici.*"⁷⁸ In 1848, apart from the Kingdom of Lombardo-Veneto where Jews and Protestants enjoyed freedom to operate under the Austrian imperial laws, it was only in Tuscany that "*gli altri culti ora esistenti sono permessi conformemente alle leggi*" (Statuto fondamentale toscano: 15th February 1848, art. 1).⁷⁹ In the other regions the pre-existing state of intolerance continued to be observed, a situation affirmed notably by

⁷⁵ For a useful but limited analysis of the juridical position of all the minority religions in Italy up to the early 1930's, see M. Piacentini, *I culti ammessi nello Stato italiano*, Milano: Hoepli, 1934.

⁷⁶ G. Peyrot, *La legislazione sulle confessioni religiose diverse dalla cattolica* in P. D'Avack (Ed.), *La legislazione ecclesiastica*, Milano: Istituto per la scienza dell'amministrazione pubblica, 1967, pp. 521-547.

⁷⁷ Cited in Peyrot, *La legislazione sulle confessioni religiose*, p. 521.

⁷⁸ Ibid., p. 522.

⁷⁹ Ibid.

the Neapolitan constitution which stated in article 3: “L’unica religione di Stato sarà sempre la cristiana, cattolica, apostolica e romana, senza che possa essere permesso mai l’esercizio di alcun’altra religione” (Costituzione napoletana: 10th February 1848).⁸⁰

a) *The Albertine Statute*

Piedmont’s Statuto fondamentale del Regno of March 4th 1848 (known as the Albertine Statute after King Carlo Alberto) reaffirmed the pre-existing state of limited tolerance of the religious minorities as laid out in the Piedmont civil code of 1837.⁸¹ The statute, which was adopted in 1870 as the Constitution of the new unified Kingdom of Italy, was arguably the most significant piece of ecclesiastical legislation of the 19th century: article 1 not only made Piedmont and then the whole Kingdom of Italy a Catholic confessional state, but also ensured, in varying degrees, the subordination of the country’s minority religions for the next 120 years. Article 1 stated: “La religione cattolica, apostolica e romana è la sola religione dello Stato. Gli altri culti ora esistenti sono tollerati conformemente alle leggi”.⁸² The phrase ‘ora esistenti’ contains an implicit prohibition of the creation or admission of new religions, but they were not banned. In fact, by 1929, there were more minority religions in Italy than there had been in 1848. This was one of the reasons for considering article 1 of the Statute to be obsolete, particularly after the Law of Guarantees of 1871 had stated in article 2 clause 4 that “la discussione sulle materie religiose è pienamente libera.”⁸³

The status of the minority religions from the time of the Albertine Statute onwards is complex and even the eminent Protestant commentator Giorgio Peyrot is at best unclear on the matter.⁸⁴ The two largest minority religions – the Waldensians (or Valdesi) and the Jews – would soon after be treated independently: the Valdesi would be considered ‘emancipati’, by Regio Decreto 29.03.1848, no. 688 and the Jews ‘resi liberi’ by Regio Decreto 19.06.1848, no. 735. In fact, the Valdesi had been granted letters of permission to this effect on 17th February 1848, three weeks before ratification of the Statute. So even then there was a discrepancy of status between the

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Cited in Falzone, Vittorio, *La Costituzione ed i culti non cattolici*, Milano: A. Giuffrè, 1953, p. 9.

⁸³ Cited in Falzone, *La Costituzione ed i culti non cattolici*, p. 9.

⁸⁴ See Peyrot, *La legislazione sulle confessioni religiose*, p. 544 and G. Peyrot, *Religious liberty and conditions of Evangelical People in Italy*, Rome, Ferraiolo, 1957, p. 24. For a clearer analysis of the situation, see I. Soffietti, *Lo Statuto Albertino*, Torino, Giappichelli, 1999.

Statute and the law.⁸⁵ Moreover, following the promulgation of the Albertine Statute, the legge Sineo (19th June 1848, n.735) was passed which ‘removed all doubts about the capacity of non-Catholic citizens to fulfil their civil, political and military duties’.⁸⁶

In 1849, following an initiative by the Piedmontese government, the Ministry of the Interior set up a commission to look into the possibility of unifying the legislature dealing with the Valdese and the Jews. However, due to the diverse needs, doctrines and demands of each group, the commission only succeeded in drawing up two separate sets of provisions, neither of which improved the position of the respective religions.⁸⁷ The degree of religious freedom envisaged in these provisions highlighted the limits within which the idea of tolerance was conceived in the Albertine Statute of 1848: a tolerance which at that time was not yet open to the idea of full religious freedom.⁸⁸ Although the new provisions were not presented to parliament until 1854, in September 1849 the *Tavola valdese* made its position very plain: “the Valdese Church, being such by virtue of its rule of faith and by its constitution, must govern itself in a totally independent way according to its principles and within the limits of common law; every obstacle or restriction imposed by the State on its activities or on its internal development, threatens its right of autonomy and misrepresents it as a Church, leading to its destruction.”⁸⁹

The other notable amendments to the laws dealing with ecclesiastical bodies and their operation, the ‘Law of Guarantees’ of 1871 and the 1889 amendments to the laws dealing with public security, actually applied to Catholic ecclesiastical functions as well as to those of the minority religions.

⁸⁵ In theory, the Albertine Statute remained in force until the 1948 Republican Constitution replaced it. So, constitutionally, all the minority religions remained ‘tollerati’ for 100 years. However, as far as ordinary law is concerned their position changed in 1929-30 with the Lateran Pacts and the accompanying civil laws (discussed later). At this time the Jews and the Valdese with their ‘emancipati’ status became ‘ammessi’ along with every other non-Catholic religion. This was a backward step on paper for the ‘big two’ but an improvement for the others who had emerged under the liberal governments as merely ‘tollerati’.

⁸⁶ Falzone, *La Costituzione ed i culti non cattolici*, pp. 9-10.

⁸⁷ Peyrot, *La legislazione sulle confessioni religiose*, p. 538.

⁸⁸ *Ibid.*, p. 539.

⁸⁹ *Dicharazione della Tavola valdese del 27 settembre 1849*, in Peyrot, *Rapporti tra Stato e Chiesa valdese in Piemonte nel triennio 1849/51*, in ‘Il diritto ecclesiastico’, 1955, pp.111ff. The statement was very similar in tone and wording to the one made on 3rd September 1943, by the Valdese Synod, in response to the fall of Fascism. The Jewish community would be equally unimpressed by the new laws. For a detailed account of the reaction of both the Valdese and Jewish communities, see Peyrot, *La legislazione sulle confessioni religiose*, pp. 538-542.

b) *The 'Law of Guarantees'*

The Law of Guarantees (R.D. 13.05.1871, no. 214)⁹⁰ was so-called as it was an attempt by the Italian government to offer sufficient guarantees to the Holy See to pacify it following the annexation of the Papal States. However the way it was presented did more to further antagonise the Vatican: its title was “Legge sulle prerogative del Sommo Pontefice e della Santa Sede . . .”,⁹¹ in other words, the State was granting concessions to the Church and in so doing was implicitly subordinating the Church to the State. Article two of the law was thus considered by the Church to be particularly belittling: “L’ attentato contro la persona del Sommo Pontefice e la provocazione a commetterlo sono puniti colle stesse pene stabilite per l’ attentato e per la provocazione a commetterlo contro la persona del Re.”⁹² Catholic political doctrine at the time considered that the State was subordinate to the Church and so putting the heads of each institution on the same juridical plane was considered to be a grave insult to the Pope. Furthermore the final clause of article two, the most famous (or infamous) of the document: “La discussione sulle materie religiose è pienamente libera”,⁹³ was perplexing to the Catholic Church in that it again undermined its authority by opening the door to Protestant propaganda. Article 17 also contained a major put-down for the Catholic hierarchy:⁹⁴ appeals against decisions made by the ecclesiastical authorities had to be made through the civil courts and in matters where ecclesiastical law overlapped or contravened civil law, the latter took precedence over the former. Hence, on a legal level, the Church was indeed subordinate to the State and, although it could argue that it was an ‘ordinamento originario’, it was not an ‘ordinamento indipendente’.⁹⁵ This situation was changed only by the Lateran Pacts.

In 1871, during the discussions for the Law of Guarantees, the *Camera dei deputati* was presented with the opportunity to deal definitively with the problem of the religious minorities by transforming the limited tolerance afforded to them by the Albertine Statute into full religious freedom. Instead, they drew back from such a bold move and in doing so let slip a golden opportunity to create national legislation

⁹⁰ *Raccolta Ufficiale*, pp. 1014-1022.

⁹¹ *Ibid.*, p. 1014.

⁹² *Ibid.*, p. 1015.

⁹³ *Ibid.*

⁹⁴ *Ibid.*, p. 1021.

⁹⁵ See Section A3 (ii) of this thesis.

regarding the religious minorities, and left Italian law on the subject uncoordinated.⁹⁶ This shows that the Italian parliament had had the same reticence in 1871 as later in 1948 to deal definitively with this question. However, in spite of the parliamentary vote of 1871 offering little improvement to the lot of the minority religions, it did reaffirm the principle of the non-interference of government in their day to day affairs.

c) *The 1889 Public Security Law*

Titolo I, Capo II of the Public Security law of 1889⁹⁷ contains 3 articles that apply to religious bodies which deal with meetings, gatherings and processions held outside churches. For example, article 7 states:

Chi promuove o dirige cerimonie religiose, o altro atto di culto fuori dei luoghi a ciò destinati, ovvero processioni ecclesiastiche o civili nelle pubbliche vie, deve darne avviso, almeno tre giorni prima, all'autorità locale di pubblica sicurezza.

Nowhere in this decree does it suggest that the instructions applied to one group or another and so one must assume that they applied to all religions including Roman Catholicism.

According to Peyrot, with the provisions of the 1871 Law of Guarantees and the 1889 Public Security Law, as the 19th century drew to a close, the non-Catholic confessions found themselves in a position of full freedom and equality with the 'religion of State', at least in relation to the exercise of and legal protection for their religious activities.⁹⁸ This situation remained unaltered until the advent of Fascism, although during the same period Catholicism remained the official religion to which the State had recourse for State ceremonies.⁹⁹

After World War One, the principal evangelical churches set in motion steps towards unification, or at least of federation, which culminated in the first Italian Evangelical Congress held in Rome in 1920. The outcomes of the congress were disappointing with regard to any form of union between the various churches.

⁹⁶ See F. Scaduto, *Guarentigie pontificie e rapporti tra Chiesa e Stato*, Torino, 1884, pp. 396-397 and Peyrot, *La legislazione sulle confessioni religiose*, pp. 531.

⁹⁷ R.D. 30.06.1889, no. 6144: *Raccolta Ufficiale*, pp. 2189-2192.

⁹⁸ Falzone confuses the issue of the status of the minority religions by claiming that the 1889 law changed the old status of 'semplicemente tollerati' or just 'tollerati', introducing the formula of the 'culti ammessi': but none of these terms actually appear anywhere in the body of the law.

⁹⁹ See Peyrot, *La legislazione sulle confessioni religiose*, p. 532 and Falzone, *La Costituzione ed i culti non cattolici*, p. 12.

However, as regards the theme of religious freedom, it actually recorded a consensus on a motion calling for the suppression of article 1 of the Albertine Statute, in the name of equality for all religions under the law and the complete separation of all the churches (presumably referring to evangelical churches and the Catholic Church) from the State.¹⁰⁰

(ii) Protestants and the Fascist regime

As has already been mentioned, the Protestants had enjoyed relative freedom under the liberal governments. But in 1926, the same year that the secret negotiations to resolve the Roman Question were initiated, the Fascist government introduced the *Testo unico delle leggi di Pubblica Sicurezza approvato con R.D. 6 novembre 1926 n. 1848*. Article no. 232 of this law dealt with bad language, blasphemy and offences against religions.¹⁰¹ The *Testo unico* shattered the principle, in force up to that point, of equal punishment for such offences for all religions. The law created harsher punishment for offences against the Catholic faith and clergy than for the same offences committed against the non-Catholic religions. This raises an important question: was this law introduced as a pre-condition for starting discussions of the Lateran Pacts? The Vatican commission charged with assessing the possibility of a conciliation was set up in November 1925 with formal discussions beginning in March 1926. Thus, by the time the Law was passed in November 1926, discussions were well under way. Given the nature of the law it seems possible that it was either a pre-requisite for starting negotiations or at least formed part of them.

a) The 'culti ammessi' laws

In his speech at the opening of the new Parliament on 21st April, 1929, the King announced that the implementation of the Lateran Concordat would require enactment of a series of legislative measures: one for the regulation of marriage, one to deal with ecclesiastical corporations and one to regulate the activities of the *culti ammessi*. Whilst the first two bills were a necessary consequence of the Concordat, as Pollard points out, the introduction of the *culti ammessi* bill was emphatically not: nothing in the Concordat necessitated the introduction of such a measure, as Rocco

¹⁰⁰ Long, *Alle origini del pluralismo confessionale*, p. 247.

¹⁰¹ Cited in Peyrot, *La legislazione sulle confessioni religiose*, p. 532.

was forced to admit to the Vatican representatives on the Implementation Commission when they questioned him about it.¹⁰²

At the end of April 1929, a fortnight before the ratification of the Lateran Pacts, the bill dealing with permitted religions was passed by the Fascist government. The wording of the Bill was as follows:

Riservata, com'è giusto, una particolare situazione giuridica alla Religione cattolica, che è la Religione dello Stato, devesi consentire, in omaggio al principio della libertà di coscienza, che nessuno Stato moderno potrebbe repudiare, il libero esercizio di tutti i culti, le cui dottrine o i cui riti non siano contrario all'ordine pubblico o al buon costume.¹⁰³

The law on the *culti ammessi* (Legge 24.06.1929, no. 1159)¹⁰⁴ was announced simultaneously with the Pacts specifically to alleviate the concerns raised among the religious minorities by article 1 of the Treaty, according to which 'Italia riconosce e riafferma il principio consacrato nell'art. 1 dello statuto del regno 4 marzo 1848, pel quale la religione cattolica, apostolica e romana è la sola religione dello Stato.' Significantly, article 1 of the Statute also stated that 'gli altri culti *ora esistenti* sono tollerati conformemente alle leggi', but this clause did not appear in the Treaty, since it was an agreement purely between the Catholic Church and the Italian State. Theoretically the clause did, however, remain valid at a constitutional level, since throughout the Fascist years, the Statute remained the official Constitution of Italy. However, the *culti ammessi* laws would have much more impact on the minority religions than the Statute ever had: although the minorities had all been put on a level

¹⁰² Pollard, *The Vatican and Italian Fascism*, p. 65.

¹⁰³ Cited in Jemolo, *Chiesa e Stato in Italia*, pp. 248.

¹⁰⁴ De Martino, V., *Leggi d'Italia (Testo Vigente) XV Edizione* Novara: De Agostini Giuridica, 1999, pp.315-6. The first six articles deal specifically with the *culti ammessi* and state: Art. 1: Sono ammessi nel Regno culti diversi dalla religione cattolica apostolica e romana, purché non professino principi e non seguono riti contrari all'ordine pubblico o al buon costume. L'esercizio, anche pubblico, di tali culti è libero; Art. 2: Gli istituti di culti diversi dalla religione dello Stato possono essere eretti in ente morale, con regio decreto su proposta del Ministro per la giustizia e gli affari di culto, di concerto col Ministro per l'interno, uditi il Consiglio di Stato e il Consiglio dei ministri. Essi sono soggetti alle leggi civili concernenti l'autorizzazione governativa per gli acquisti e per l'alienazione dei beni dei corpi morali. Norme speciali per l'esercizio della vigilanza e del controllo da parte dello Stato possono inoltre essere stabiliti ...; Art. 3: Le nomine dei ministri dei culti diversi dalla religione dello Stato debbono essere notificate al Ministero della giustizia e degli affari di culto per l'approvazione; Art. 4: La differenza di culto non forma eccezione al godimento dei diritti civili e politici ed alla ammissibilità alle cariche civili e militari (As seen in the L. 19.06.1848, no. 735 which 'emancipated' the Jews and had also appeared in the Albertine Statute of March of that year; Art. 5: La discussione in materia religiosa è pienamente libera (apart from the phrase: 'sulle materie religiose' this was the same wording as in the Law of Guarantees – article 2 last clause); Art. 6: I genitori o che ne fa le veci possono chiedere la dispensa per i propri figli dal frequentare i corsi di istruzione religiosa nelle scuole pubbliche.

legal playing field as far as ordinary law was concerned,¹⁰⁵ at a constitutional level they were left high and dry by what had become, prior to but especially during the Fascist years, a toothless and effectively defunct Statute. Although some commentators consider the 1929 law to be on the face of it quite liberal in nature, there was contained within it a definite tendency towards restricting the activities of the Protestant organisations, with the law being left deliberately ambiguous so that more detail could be added at a later date (See footnote 106).

Article 5 was the most important and, from a Catholic point of view, most contentious: 'La discussione sulle materie religiose è pienamente libera'. As Jemolo pointed out, the special Commissions set up (by the Camera dei Deputati and the Senato) to carry out the terms of the Pacts and the subsequent adjustments to the penal code forcefully denied that there was any conflict between the laws and the freedom they afforded minority religions. However, the reports of the Commissions were by no means favourable to the *culti ammessi*: a report by the special commission of the Chamber of Deputies specified that freedom of discussion, 'che deve svolgersi nei limiti di serena ed elevata discussione, è sottoposta all'applicazione delle generali norme di polizia'; and warned against certain 'audace, pretesa propaganda religiosa di parte di qualche organizzazione protestante', who had shown themselves to be 'insidiosa verso l'unione e la saldezza delle forze spirituali del regime'. The report ends: 'Non può dubitarsi che le autorità proposte sapranno vigilare.'¹⁰⁶

The Boselli report for the special Committee of the Senate was equally harsh, outlining concerns from a number of sources regarding the thorny issue of propaganda:

per verità, nell'esercizio dei culti entro i propri templi la libera predicazione è legittima edificazione e presidio della propria fede. Al di fuori, agevolmente diviene pubblica perturbazione ed insidia contro la fede altrui, tanto più se la propaganda popolarmente si diffonda fra ceti ignoranti e inconsci,¹⁰⁷ e fra le disperazioni della povertà e i patimenti delle miserie occulte e vergognose. Vi fu nella vostra Commissione chi volontieri avrebbe introdotta nella legge un'aggiunta *per impedire un illecito proselitismo fra gli orfani di genitori cattolici, ovvero fra persone bisognose, deboli ed inesperte*.¹⁰⁸

¹⁰⁵ See Falzone, *La costituzione ed i culti non cattolici*, p. 13.

¹⁰⁶ Jemolo, *Chiesa e Stato in Italia*, pp. 249-250.

¹⁰⁷ This wording is similar to that used by the Pope in his letter to Cardinal Gasparri cited in Pacelli, *Diario della Conciliazione*, pp. 550ff.

¹⁰⁸ Jemolo's italics. Cited in Jemolo, *Chiesa e Stato in Italia*, pp. 249-250.

This idea of freedom of propaganda inside their churches but not outside begs the question of whether freedom of discussion as reiterated in the *culti ammessi* laws included freedom of propaganda and proselytism. As soon as the bill on the *culti ammessi* was announced, the Holy See made its own position on the matter clear; in particular, the Pope attacked the change in the status of the Protestant churches from *culti tollerati* (and also ‘emancipati’ and ‘liberi’ respectively in the case of the Valdesi and the Jews) to *culti ammessi* which, whilst it involved some State intervention and regulation of their affairs, also meant official, legal recognition. In the letter to Gasparri, published in Osservatore Romano on 30th May 1929 (three weeks *before* the new law came into force), Pius XI begins with a defence of the position of the Catholic religion which “non è puramente e semplicemente un culto permesso ed ammesso, ma è quello che la lettera e lo spirito del Trattato e del Concordato lo vogliono.” The Pope is here detaching himself from the argument and placing the Catholic Church above the fray by saying that it is the Treaty and Concordat that determine the status of the Church in Italy.

But in the Church’s eyes the most dangerous part of the new law was article 5 regarding freedom of discussion in religious matters. This almost word-for-word reproduction of Article 2 of the Law of Guarantees undermined those Catholics who had imagined that with the signing of the Pacts, and the consequent abrogation of the Law of Guarantees, the propaganda and proselytising activities of the Protestants could be controlled by the (albeit ineffectual) Albertine Statute. In the letter to Gasparri, the Pope’s position was unequivocal:

Più delicata questione si presenta quando con tanta insistenza si parla della non menomata *libertà di coscienza* e della *piena libertà di discussione*. Non è ammissibile che si sia intesa libertà assoluta di discussione, comprese cioè quelle forme di discussione, che possono facilmente ingannare la buona fede di uditori poco illuminati, e che facilmente diventano dissimulate forme di una propaganda, non meno facilmente dannosa alla religione dello Stato, e, per ciò stesso, anche allo Stato e proprio in quello che ha di più sacro la tradizione del popolo italiano e di più essenziale la sua unità. Anche meno ammissibile Ci sembra che si sia inteso assicurare incolume, intatta, *assoluta libertà di coscienza*. Tanto varrebbe dire che la creatura non è soggetto al Creatore; tanto varrebbe legittimare ogni formazione o piuttosto deformazione della coscienza, anche le più criminose e socialmente disastrose. Se si vuol dire che la coscienza sfugge ai poteri dello Stato, se si intende riconoscere, come si riconosce, che, in fatto di coscienza, competente è la Chiesa, ed essa sola in forza del mandato divino, viene con ciò stesso

ricosciuto che in Stato cattolico, libertà di coscienza e di discussione devono intendersi e praticarsi secondo la dottrina e la legge cattolica.¹⁰⁹

The last sentence in the above quotation, which appears in Jemolo but is, for some reason, not quoted by Falzone,¹¹⁰ is indicative of the Catholic Church's view of freedom of conscience at the time. But despite the vitriole of the Vatican, the government did not allow itself to be drawn into the polemic with the Holy See on the issue and the law was passed through parliament unchallenged.

Surprisingly, as Gianni Long points out, the law was greeted with satisfaction by the Protestant leaders, for reasons which are not easily explained, but which are perhaps to be linked to the declarations of the Fascist government, favourable to the maximum religious freedom and absolutely against any form of confessionism.¹¹¹ This was the first of a number of examples of the political inexperience of the Protestant leaders during the 1930's and 1940's: here it is evident in their failure to realise that such declarations were not to be taken at face value. The *culti ammessi* laws and the subsequent amendments passed from 1930 onwards, far from ameliorating their position, served only to drastically curb their freedom, while simultaneously bolstering the Vatican's dream of a Catholic confessional state.

(iii) Repression of the Protestants

Although this section of the thesis deals only with the treatment meted out to Protestant religious groups under Fascism, it is important to point out that any social or religious group was considered by the Fascist regime to be a potential threat to its control over all aspects of religion and society and would consequently have been subjected to state regulation and regimentation. Furthermore, with regard to the minority Protestant religious groups, such as the Jehovah's Witnesses or 7th Day Adventists, Fascist attitudes to them were not so much dictated by their threat to the Catholic Church, as by suspicions regarding the fact that almost all of them had foreign origins, allegiances and financial backing with many also having strong Masonic links. It should also be remembered that the treatment of the Jehovah's Witnesses detailed in this and other sections of the thesis by the Fascists is consistent with their treatment by other totalitarian regimes such as Hitler's Germany, Mao's

¹⁰⁹ Ibid., p. 236. The whole letter appears in Pacelli, *Diario della Conciliazione*, pp. 549-557.

¹¹⁰ Falzone, *La Costituzione ed i culti non cattolici*, p. 16.

¹¹¹ Long, *Alle origini del pluralismo confessionale*, p. 248.

China and Stalin's Russia which can be attributed to their unwillingness to accept secular authority.¹¹²

In order to achieve his objective of obstructing Protestant propaganda and penetration of society, Pius XI sought the collaboration of the Fascist government. He pointed out to Mussolini that the Protestant sects were not part of the 'Italian tradition'.¹¹³ Using this argument he was able to call for the defence of the 'national religion' and the 'national culture' in the same way as he had previously gained Fascist recognition of the rights of the Catholic Church. This alliance centred around the fight against the rise and development of pluralist opinions and positions among the reformist (Protestant) religious groups, perceived by both Catholics and Fascists to be a threat to the unity of Italian society.¹¹⁴ Thus, the condition of Protestant groups in Italy under Fascism was effectively the result of three factors: the Regime's directives, the manoeuvring of the Catholic organisations and, particularly after the fall of Fascism when they had for a brief period slightly more room to manoeuvre, the actions of the Protestant minorities.¹¹⁵ I will briefly examine these three factors to illustrate the situation in which they found themselves.

a) *The Regime's directives*

As mentioned above, the negotiations for the Lateran Pacts began in 1926, the same year in which the Fascist law increasing the punishment for crimes committed against the Catholic Church was introduced. Then between April 1927 and December 1928 the first phase of monitoring of the evangelical organisations took place with the Pentecostals coming under particular scrutiny. Even before the Pacts appeared the authorities were already demonstrating a high regard for Vatican wishes: an article in *Osservatore Romano*, the Vatican's official newspaper, dated 8th November 1928 in which the expansion of Protestant propaganda in Italy was denounced, resulted in the Minister of the Interior inviting the local authorities to exercise greater control over the relevant Protestant churches.¹¹⁶ In fact, Scoppola goes further, suggesting that all it took were merely complaints by Catholics to

¹¹² I am indebted to Professor John Pollard for this information.

¹¹³ Pacelli, *Diario della Conciliazione*, p. 552.

¹¹⁴ Giovagnoli, *La cultura democristiana*, p. 53.

¹¹⁵ P. Scoppola, *Il fascismo e le minoranze evangeliche* in S. Fontana (a cura di) *Il fascismo e le autonomie locali*, Bologna: Il Mulino, 1973, pp. 331-394, pp. 331-332.

¹¹⁶ Archivio Centrale dello Stato, Serie P.S. 1920-45, Divisione A.G.R., Categoria G.1, busta 155, fascicolo 116, sottofascicolo 2, 'Corrispondenza varia'.

achieve such intervention.¹¹⁷ After this period all the churches were placed under increasing pressure from police authorities with many of their activities and rituals requiring police approval, and frequently being banned.¹¹⁸ On the occasion of the signing of the Pacts, which determined the religious orientation of the regime, the police hierarchy put out a series of memoranda explicitly stating that the evangelical churches should be considered as suspect, even if they could not be accused of doing anything concrete against the Fascist regime.¹¹⁹ The memoranda proposed various levels of surveillance depending on the perceived threat of the individual group. For example, the Salvation Army was not considered to be dangerous to public order, influential on a political level, or a challenge to the religious convictions of the regime, and so simple ‘continual monitoring’ was advised. The Pentecostals, on the other hand, although acknowledged by the regime as having no political ambitions and a ‘purity of intent’,¹²⁰ had a particularly aggressive memorandum put out concerning their activities.¹²¹ The controls became harsher after the Pacts were signed: on the 29th February 1929 a memo from Police Headquarters in Rome referring to recent operations underlined the need to continue increasing surveillance on the evangelical churches due to their undoubted ‘ostilità latente’ towards the regime ‘tanto più d’ora in avanti . . . in seguito alla riconciliazione avvenuta fra la Chiesa cattolica e lo Stato.’¹²²

Rochat had some interesting observations to make on the origins and application of the Fascist laws dealing with religious minorities: firstly, policy was defined on the whole by the civil servants in the Ministry of the Interior, without any form of debate or public control, but with overwhelming pressure from Catholic authorities to drastically reduce religious freedom. The only political interventions were by Mussolini, who occasionally gave instructions directly to the Chief of

¹¹⁷ Scoppola, *Il fascismo e le minoranze evangeliche*, p. 335.

¹¹⁸ G. Rochat, *Polizia fascista e chiese evangeliche* in *I Valdesi e l'Europa* (pp.407-434) Torre Pellice: Brandoni, 1982, p. 413.

¹¹⁹ Memoranda cited in Rochat, *Polizia fascista e chiese evangeliche*, pp. 414-416.

¹²⁰ Ibid., p. 415.

¹²¹ “Pur rilevando la limitata importanza del fenomeno e pur non risultando provata l’esistenza di forme morbose del culto, è da considerare che trattasi di un culto contrastante con la religione dello stato, importato di recente e circoscritto in alcune provincie di Sicilia e della Puglia, regioni nelle quali la religione cattolica è profondamente sentita e professata, insegnata e appresa da ignoranti. In queste condizioni un culto del genere non solo non risponde ad un sentito bisogno spirituale, ma può rappresentare un pericolo e pertanto si presenta la necessità di riesaminare lo stato di tolleranza vigilata in cui è stato finora tenuto.” Cited in Rochat, *Polizia fascista e chiese evangeliche*, p. 416. For details of the Associazione cristiana dei giovani (ACDG, known in the UK as the YMCA) and its treatment under fascism see *ibid.*, pp. 420-425.

¹²² Archivio Centrale dello Stato (ACS), Serie P.S. 1920-45 (Divisione A.G.R., Categoria G.1, busta 155, fascicolo 116, sottofascicolo 11, ‘Società biblica e forestiere’. See also Scoppola, *Il fascismo e le minoranze evangeliche*, p. 335.

Police. Even then there was no coherent policy, but rather a series of tactical reactions to different situations, though generally as a consequence of what he terms the ‘*evoluzione dei rapporti tra stato fascista e chiesa cattolica*’.¹²³ Under the *culti ammessi* laws, responsibility for religious freedom was devolved to ministerial bureaucrats and to the local and regional police authorities who, in the interpretation and application of the law, were granted extremely wide-ranging discretionary powers.¹²⁴ The leaders of the Protestant churches were not able to argue their case, but had to accept the situation and deal with the defence of their religious freedom directly with the Chief of Police, or even with what Rochat calls ‘*il principale strumento della repressione di tutte le libertà civili e politiche*’,¹²⁵ in other words, the Fascist government. In these dealings, the evangelical churches were starting from a position of considerable weakness: they did not have the political leverage of the Catholic Church and, moreover, they had to reckon with overt hostility from the ‘*religion of state*’. For the civil servants, the only benchmark for religious freedom was maintaining public order and the defence of the dictatorship. If they paid heed to Catholic demands it was not, according to Rochat, because of any religious conviction or crusading spirit, but because of the liberal tradition of indifference or neutrality in religious matters, and a realistic evaluation of the difference in the political strength of the Catholics and the Protestants; also because the Catholic Church was duty bound, at all levels, to defend the Fascist regime with a conviction and effectiveness that the evangelical churches could not have.¹²⁶

Scoppola also has an interesting view of the context in which the *culti ammessi* law was passed: in response to the requests of the Church there was, in the attitude of the regime, a continuous alternation between the Church’s wishes being readily accommodated, with sometimes even a hint of servility, and concerns about regaining some distance from the Vatican. Scoppola claims that looking after the religious liberty of small minorities was of no consequence at all to an authoritarian regime; it was much more interested in its relationship to the Catholic Church, seeking to gain its backing to reaffirm the autonomy and sovereignty of the State and its totalitarian character. It is, he says, against this background that one must locate the *culti ammessi* law, which was inspired by the need to rebalance (‘*riequilibrare*’)

¹²³ Rochat, *Polizia fascista e chiese evangeliche*, p. 416.

¹²⁴ Ibid. Rochat points out that this type of allocation of duties was not unique under fascism.

¹²⁵ Ibid.

¹²⁶ Ibid., pp. 416-417.

the situation created by the agreement with the Catholic Church.¹²⁷ I would question this assessment of the creation of the *culti ammessi* law: if he means rebalancing the situation between the Catholics and the Protestants, then it is hard to see how a series of repressive laws that created massive amounts of bureaucracy for the minority churches (particularly their leaders) can be considered as rebalancing a situation where a Treaty and a Concordat created a new state, guaranteed independence for the Catholic Church and allowed it freedom to operate outside of State influence. If he means that the law was passed to create distance between the regime and the Church, then that would have been best achieved by ignoring the demands of the Catholic Church on the subject of the Protestants, since the Vatican had already been granted everything it could have wished for in the Pacts. Indeed, as Rocco, the Keeper of the Seals, was forced to admit, the *culti ammessi* laws were a totally unnecessary consequence of the Concordat.¹²⁸

Despite the controls placed on Protestant denominations by the *culti ammessi* laws, their new legal status meant that the Church and Catholic Action felt themselves obliged to 'intensify resistance to Protestant propaganda' as Pollard puts it.¹²⁹ To this end they received the full support of the Fascist government: between 1930 and 1940, Fascist irritation with the Protestants combined with the Catholic fear of their perceived threat to Holy Mother Church as a consequence of their new-found freedom to proselytise, and led to a series of restrictions being imposed in subsequent amendments to the *culti ammessi* laws. R.D. 28.02.1930, no. 289¹³⁰ dealt with ministers' rights and crimes against the religion of State and against *culti ammessi*; R.D. 30.10.1930, n. 1731¹³¹ revoked the freedom of the Jewish communities; R.D. 18.06.1931, no. 773¹³² contained 224 articles on public security, of which three (25,

¹²⁷ Scoppola, *Il fascismo e le minoranze evangeliche*, p. 341.

¹²⁸ Pollard, *The Vatican and Italian Fascism*, p. 65.

¹²⁹ Ibid., p. 110.

¹³⁰ Article 1 obliged ministers of minority religions not only to apply to the Ministry of Justice for permission to open new places of worship, but to prove that 'il tempio od oratorio è necessario per soddisfare effettivi bisogni religiosi di importanti nuclei di fedeli ed è fornito di mezzi sufficienti per sostenere le spese di manutenzione.' Article 7 stated that ministers could be exempt from military service but only 'su attestazione del procuratore generale del re presso la Corte d'appello, il quale dichiara che l'opera loro è assolutamente indispensabile e insostituibile per l'assistenza religiosa dei fedeli affidati alle loro cure.' The definition of 'importanti nuclei dei fedeli' and of their work being 'assolutamente indispensabile' was left to the discretion of the local authorities thus providing the loophole for future clamp-downs on the organisations. Articles 402 and 405 legislated for crimes against both the religion of state and the *culti ammessi*; but article 406 reduced the punishment for crimes against the *culti ammessi*. De Martino, *Leggi d'Italia*, pp. 317-320. See also Jemolo, *Chiesa e Stato in Italia*, p. 251.

¹³¹ De Martino, *Leggi d'Italia*, pp. 157-164.

¹³² Ibid., p. 833. See also Falzone, *La Costituzione ed i culti non cattolici*, p. 18. This law also reproduced the corresponding articles of the law of November 6th 1926: Article 25: 'The Questore

26 & 27) gave local Questori extended powers and increased fines to clamp down on illegal religious ceremonies and civil or religious processions held outside places of worship. The amendments thus resulted in the creation of a whole network of surveillance and legal controls on the day-to-day running of the non-Catholic religious groups which, according to Peyrot, blatantly ignored the policy of ‘non-interference’ affirmed by the parliamentary vote of 1871 which passed the ‘Law of Guarantees’.¹³³ However, this was inevitable since the Lateran Pacts and the *culti ammessi* laws had together effectively abrogated the Law of Guarantees.

The high profile persecution of the Jews between 1938 and 1943 in Italy was preceded by persecution of the Pentecostals. The *laissez faire* approach to the latter from 1931 changed markedly just four years later. In a Ministry of the Interior circular promulgated on 9th April 1935, the Pentecostals were no longer referred to as a ‘recognised faith’, but as an ‘associazione di fatto’ (i.e. with no legal rights). The faith professed by such associations, which the circular claimed was not recognised by article 2 of the *culti ammessi* law (the law says nothing to this effect), was no longer to be admitted in the kingdom, since ‘expression of the faith results in religious practices that are contrary to social order and harmful to the physical and psychological integrity of the race’.¹³⁴ The Pentecostals were hit hard by Fascist reprisals at the start of the war because many were also conscientious objectors. Catholic bishops and archbishops often played a decisive role in their repression. Details of meetings supposedly held in secret were divulged to the ecclesiastics who freely passed the information on to the police. Their institutions and places of worship were immediately destroyed or shut down citing reasons of ‘racial health’. Other religious faiths such as the Jehovah’s Witnesses were then also shut down for allegedly collaborating with anti-fascist groups in America who were supposedly using them to disseminate anti-fascist propaganda in Italy. The authorities accused these groups of brainwashing their devotees to the point where they ‘no longer had a grasp on the realities of life’. Even after the war had begun, those groups still operating had their mail vetted by the police authorities.¹³⁵

must be given three days notice of any meetings or rallies held outside churches: punishment is three months in prison or up to 500 lire fine’. And article 26: ‘The Questore has the right to veto or control such gatherings giving organisers 24 hours notice.’ Both of these laws referred both to non-Catholic and Catholic organisations although there can be little doubt as to which group suffered most.

¹³³ Peyrot, *La legislazione sulle confessioni religiose*, p. 537.

¹³⁴ Cited in Falzone, *La Costituzione ed i culti non cattolici*, p. 21.

¹³⁵ Ibid.

With regard to this period of increased activity against the Protestant churches, Scoppola makes a quite remarkable statement:

Escluderei nettamente – mi riferisco sempre agli anni anteriori al '39 – che possa parlarsi di persecuzione, anche solo larvata. Non si dimentichi che uno dei più ampi e approfonditi studi sulla legge per i culti ammessi fu quello del 1934 di Mario Piacentini, giurista di chiara fama e di altrettanto sicura fede evangelica: lo studio riconosce con larghezza i meriti della legislazione fascista e i progressi che essa ha segnato rispetto al passato.¹³⁶

The obvious point to make here is that Piacentini's study was published the year before the first serious clamp-down on the evangelical activities in 1935-36. In his footnote Scoppola quotes another two authors who he says are in agreement that initially the laws were well received by the Evangelicals.¹³⁷ In the early years they were indeed, in some protestant circles, considered to be an improvement of their lot. However, the openness of the laws to interpretation in any way that local authorities saw fit, combined with Fascist and Catholic intimidation and attacks, both verbal and actual, must cast serious doubts on the validity of these initial analyses. Nevertheless, Scoppola persists with his line that, initially, the evangelical groups were not badly treated: for the first ten years after the laws were introduced

gli evangelici in definitiva sono vissuti in quegli anni sotto il fucile puntato da una assidua vigilanza di polizia, continuatamente sollecitata da informatori e da ambienti cattolici, ma il fucile ha raramente sparato.¹³⁸

Three points need to be made here: firstly, the gun does not have to fire to be hostile and oppressive yet Scoppola seems quite unmoved that they had to live with this fear.¹³⁹ Secondly, Catholics would have protested about the action of evangelical churches whether they were being shown leniency or not. Their's was the religion of State and any group acting contrary to that, whether behind closed doors or not, would have been considered as antagonistic to the Church. Thirdly, even though the laws were hostile to the minorities, more hostile was the constant police harassment and the punishment for acting contrary to the law. Consequently, the evangelicals were in an impossible position: the laws put so many restrictions on them that by following them they found it almost impossible to operate; failing to act within the

¹³⁶ Scoppola, *Il fascismo e le minoranze evangeliche*, p. 346.

¹³⁷ G. Miegge, *L'Église sous le joug fasciste*, Genève, 1946; and E. Ayassot, *I protestanti in Italia*, Milano, Area, 1962.

¹³⁸ Scoppola, *Il fascismo e le minoranze evangeliche*, p. 347.

¹³⁹ See also Rochat's response to this statement by Scoppola: "va precisato che vivere sotto un fucile puntato è comunque piuttosto duro", in Rochat, *Polizia fascista e chiese evangeliche*, p. 425.

laws brought about the closing down of churches, the deportation of foreign ministers and, particularly in predominantly Catholic areas, evangelicals found themselves ostracised from society. Scoppola blames the evangelical groups for inciting the Fascists to act against them by constantly putting out pacifist propaganda. Scoppola seems to imply that there was an inevitability about Fascist clamp downs on these groups and to a certain extent that was true, but Scoppola appears to be exculpating these actions.

From September 1940 Fascist repression became more intense right across the religious spectrum, now also targeting Catholic organisations that were not wholly committed to the idea of a Fascist victory, even banning prayers that had been widely used in Catholic churches during World War One.¹⁴⁰ With this new change of direction in its attitude to religious freedom, one can only wonder at the ferocity of Fascist attacks on the evangelical churches. The most threatening example of the new Fascist clamp-down came directly from the Secretary of the Fascist Party, Adelchi Serena, who on the 30th July 1941, sent a letter to the Prefect of Turin making a series of spurious claims about the Valdesi in the area: they were outspoken anti-Fascists, they were taking all the local government positions and forcing the local Catholic population to live in a state of utter humiliation.¹⁴¹ The Prefect of Turin took three months to conduct an in-depth survey of the Valdese valley. The reply was very detailed and quite categorical in its denial of the accusations levelled at the region by Serena.¹⁴²

Scoppola claims that it was only during the Second World War that the gaps allowing a wider interpretation of the *culti ammessi* laws appeared in the legislature

¹⁴⁰ For more on this see F. Malgeri, *La Chiesa italiana e la guerra 1940-45*, Roma: Studium, 1980.

¹⁴¹ The following are extracts from the letter: 'Viene denunciato l'irriducibile antifascismo dei valdesi, accentuatosi nelle valli Pellice e Germanasca dopo la conciliazione col Vaticano ed il ritorno dell'insegnamento religioso. Tali valdesi – a quanto viene riferito – non dissimulano di sentirsi stranieri in Italia, ostentano di parlare soltanto in lingua francese, seguono gli avvenimenti politici e militari e li commentano solo in funzione dei loro sentimenti antitaliani. La popolazione cattolica vivrebbe in tali valli in stato di vera umiliazione, anche perché i valdesi sembrano essere riusciti assicurarsi tutti i posti direttivi della vita pubblica. Si attendono al riguardo esaurienti informazioni.' ACS, Fondo Ministero degli interni, Direzione generale di pubblica sicurezza, Divisione affari generali e riservati, Categoria G.1 (1920-45), *Chiese evangeliche valdesi*, busta 11, fascicolo 136; file missing in January 2003, but cited in Rochat, *Polizia fascista e chiese evangeliche*, p. 434.

¹⁴² The following are extracts from the reply: 'non sono risultati elementi specifici che potessero essere interpretati come manifestazioni di sentimenti antitaliani, o più precisamente filoinglesi. I podestà della zona sono tutti cattolici ad eccezione di quello del comune di Massello . . . e di Prali. Non risulta poi assolutamente rispondente a verità che la popolazione cattolica viva in uno stato di vera umiliazione, in quanto l'elemento valdese non ha alcuna influenza sulla popolazione cattolica.' ACS, Fondo Ministero degli interni, Direzione generale di pubblica sicurezza, Divisione affari generali e riservati, Categoria G.1 (1920-45), *Chiese evangeliche valdesi*, b.11, f. 136; file missing in January 2003, but cited in Rochat, *Polizia fascista e chiese evangeliche*, p. 434.

as a result of the unstable political situation.¹⁴³ This is only true to a certain extent: in reality, there had been wide discrepancies in the application and interpretation of the laws from the moment they hit the statute book in 1929 depending on the region, the police, the *Questore*, the local judiciary, the levels of evangelical activity and the degree of militancy of the local Catholic organisations. There is, however, evidence that the war did indeed focus the Fascists' attention on the Protestants:¹⁴⁴ R.D. 06.05.1940, no. 635¹⁴⁵ (articles 19 – 32) further increased the restrictions and complicated the application procedure for religious activities outside churches. This law appears to have been passed in anticipation of Italy entering the Second World War, clamping down even more firmly on those organisations deemed dangerous to the regime, in that they were funded or organised from abroad.¹⁴⁶ In 1941, a committee set up for the spiritual assistance of *valdesi* within the forces was denounced by the *Ministero dell'Interno* as motivated by 'soliti sentimenti pacifisti e pietistici' and immediately outlawed.¹⁴⁷ Evangelical headquarters were shut down under wartime laws, places of worship closed and authorisations for individual pastors were revoked. The Salvation Army was disbanded by a provision dated 17th August 1940 and its leader, Carmelo Lombardo, was sent into exile for five years. From a private note made on 2nd October 1940, it emerges that the Papal Nuncio to the Italian Parliament, Borgongini Duca praised the provision closing them down.¹⁴⁸ The regime did not limit its surveillance to evangelicals and others on home territory: its foreign diplomats, particularly those in the USA were also monitored for their political and religious activities.¹⁴⁹

Scoppola interprets other examples of authorities hampering the work of the protestants as protecting them against the unwanted attentions of the Catholic Church. In the summer of 1930 at Gaeta a 7th Day Adventist pastor, Sig. Cupertino, wanted to move his church from the suburbs into the town centre. The Prefect summed up the situation in a letter to an unnamed Minister in Rome.¹⁵⁰ Although the

¹⁴³ Scoppola, *Il fascismo e le minoranze evangeliche*, p. 346.

¹⁴⁴ See Falzone, *La Costituzione ed i culti non cattolici*, pp. 18-19.

¹⁴⁵ De Martino, *Leggi d'Italia*, pp. 1276-1277.

¹⁴⁶ See Rochat, *Polizia fascista e chiese evangeliche*, pp. 416-417.

¹⁴⁷ Telegram dated 25th February 1941, 'N.10833 Culti', in ACS, Serie P.S. 1920-45, Divisione A.G.R., Categoria G.1, b. 147, f. 27; file missing in January 2003, but cited in Scoppola, *Il fascismo e le minoranze evangeliche*, p. 352.

¹⁴⁸ ACS, Serie P.S. 1920-45, Divisione A.G.R., Categoria G.1, b. 149, f. 65; file missing in January 2003, but cited in Scoppola, *Il fascismo e le minoranze evangeliche*, p. 353.

¹⁴⁹ *Ibid.*, p. 336.

¹⁵⁰ The following are extracts from the letter: "Naturalmente la notizia destò allarme nel rione, abitato esclusivamente da cattolici, e per tale motivo chiamai in ufficio il Sig. Cupertino, facendogli comprendere l'inopportunità della scelta del locale, pregandolo perciò di trovarne altro non vicino a

local Archbishop was naturally against such a move, the Minister agreed with the Prefect's opinion that the proposals of the Archbishop were not consistent with the law as it stood. However, the Archbishop had the last word, as the pastor found no one in the town centre prepared to rent him anywhere to open a new church.¹⁵¹

I would agree with Scoppola's view that during the Fascist years the profoundly illiberal nature of Fascism and the exaltation of a national sense of unity of faith reignited a crusading spirit, dormant but not extinguished, in many Catholics and in the hierarchy of the Church itself. This coincides with Pius XI's vision of an Italy governed along Catholic lines and with a Catholic national identity. However, Scoppola underestimates the impact and implications of the Lateran Pacts when he calls the Catholic confessional resurgence in Italy during the thirties an 'illusion': Pius XI himself wanted "un concordato che assicurasse l'influenza cattolica nel Regno d'Italia" and sought personal guarantees that the Catholic faith "fosse effettivamente e non solo di nome la religione dello Stato".¹⁵² However, I believe Scoppola is correct in his assessment that this confessional resurgence, whether an illusion or not, nurtured the spirit of intolerance among the Catholic laity and was also a necessary pre-requisite for the success of the regime's ecclesiastical policies and in particular the *culti ammessi* laws.¹⁵³

Falzone, like Gianni Long, claims that up to 1940 these laws were applied in a quite relaxed manner and were quite favourable to the *culti ammessi*,¹⁵⁴ although I have found much evidence to the contrary. However, what is clear, though nonetheless difficult to justify, is that at government level the laws were accepted for almost four decades: the laws of 1929 and the subsequent implementation additions remained on the statute book well into the 1960's, before it was considered necessary to make amendments to bring them into line with the supposedly renewed climate of

chiese cattoliche, ciò che egli promise di fare. In seguito . . . il Cupertino ha trovato un locale idoneo per trasferirvi la chiesa, ma, a quanto pare, il proprietario, per consiglio del proprio parroco, rifiutò poi di concludere l'affitto. In merito ho ritenuto opportuno stamane sentire il parere di S.E. l'Archivescovo, il quale però mi ha detto che non potrebbe tollerare il trasferimento della chiesa avventista nell'abitato, anche se in locale distante da chiese cattoliche, non avendo il pastore avventista motivi plausibili nel fare tale trasferimento per mancanza dei fedeli nel centro, aggiungendo che tale suo proposito aveva fondamento su precise istruzioni ricevute dal Vaticano . . . Poiché tale proposito di S.E. l'Archivescovo contrasta con le disposizioni vigenti, ho ritenuto opportuno portare quanto sopra a conoscenza di codesto On. Ministero." ACS, Serie P.S. 1920-45, Divisione A.G.R., Categoria G.1, b. 147, f. 26, sottofascicolo 2; file missing in January 2003, but cited in Scoppola, *Il fascismo e le minoranze evangeliche*, pp. 338-9.

¹⁵¹ Ibid., p. 339.

¹⁵² Cited in Giovagnoli, *La cultura democristiana*, p. 46.

¹⁵³ Scoppola, *Il fascismo e le minoranze evangeliche*, p. 367.

¹⁵⁴ See Falzone, *La Costituzione ed i culti non cattolici*, pp. 18-19; and Long, *Alle origini del pluralismo confessionale*, p. 248.

religious freedom of the time, and the institutional autonomy that had been granted to these minority religions by the Republican Constitution of 1948.

b) *The manoeuvring of the Catholic organisations*

Following the signing of the Lateran Pacts, Giovagnoli claims that there was a shift in the approach of the Vatican to Catholic supremacy: rather than promoting the theological argument of the 'Catholic truth' in contrast to the 'pretensions' of the other confessions, in the letter to Cardinal Gasparri from Pius XI, published in the Vatican newspaper *Osservatore Romano* on 30th May, 1929, it was rather the political concept of the Catholic confessional state that was more clearly defined. Although the Protestant presence in Italy was in fact very limited and hardly a concern for the overwhelming Catholic majority, this presence represented what was perceived to be a worrying symptom: the Protestant Reformation was considered to be at the heart of Europe's disintegration, of liberalism, industrialism and ultimately socialism. Thus, in Italy, the struggle against this minority took on the symbolic value of a wider call to arms against a 'secular' and 'pluralist' society, and in defence of a situation in which religious pluralism would be non-existent, the religious unity of the people would form the basis of social life, and the teachings of the Church would become universally accepted in society.¹⁵⁵

As a direct result of the protection given to the Catholic Church by the Pacts, the most important and newest aspect of the situation after 1929 undoubtedly centres around Catholic hostility towards the evangelicals, which manifested itself in the increased and often powerful Catholic pressure on the public authorities.¹⁵⁶ In Catholic circles there was considerable dissatisfaction with the perceived new levels of freedom afforded the minorities and they were not afraid to address the issue. Camillo D'Alessandro was an evangelical pastor in Formia. Working in coalition against him were the military Commandant Piero Brandimarte and Bishop Dionigio Casaroli. Scoppola says that the pastor must have been a very effective proselytiser because included in his flock were several people considered by the authorities to be militants. Consequently the Bishop wrote to the General of the Fascist Militia calling in no uncertain terms for the pastor to be given a 'change of air'!¹⁵⁷ A few weeks

¹⁵⁵ Giovagnoli, *La cultura democristiana*, p. 46.

¹⁵⁶ Scoppola, *Il fascismo e le minoranze evangeliche*, p. 336.

¹⁵⁷ His letter is dated 20th April 1929, from which the following are extracts: 'dietro la segnalazione fatta nel giorno del nostro primo incontro, ha compiuto per arrestare in questa mia Arcidiocesi la subdola propaganda del protestantesimo, (e dunque) sento il dovere di esprimerle tutta la mia più

later the two major Catholic newspapers, '*L'Osservatore romano*' and '*L'Avvenire d'Italia*' denounced the extension of evangelical propaganda and called for action against it.¹⁵⁸ The 'appropriate action' was indeed taken by the Chief of police and the Prefect of Bologna.¹⁵⁹

Unrest was particularly widespread in the ranks of Catholic Action and this had not gone unnoticed by the regime. Inside information had been received by Police headquarters in Rome of unease even in the Vicariate of Rome, where, in a meeting held at the end of February 1930, Cardinal Marchetti Selvaggiani said he was saddened that, after the Lateran Accords, the national government had given too much freedom to the Protestants. He concluded that rather than the Holy See renewing its protestations, which would perhaps have little effect, 'the Catholic youth should think about opposing this revival of Protestant propaganda'.¹⁶⁰

When the electoral lists for the *collegio unico nazionale* were announced in 1929, Padre Tacchi Venturi, working in the Vatican Secretariat for Ordinary Ecclesiastical Affairs (the equivalent of the Home Office), approached Mussolini directly to remove the names of those whom it was felt would not offer sufficient guarantees from a Catholic point of view, presenting in their place 'un elenco di alcuni candidati di sani principi e specchiata condotta morale da inserire, ove non lo fossero, nella lista del collegio unico.' In this list there were, amongst others, two nominees 'proposti in alternativa a quello di un valdese, dal quale . . . i cattolici non vogliono essere rappresentati, e di un ebreo'.¹⁶¹

The support of the Catholic Church in the March 1929 plebiscite embarrassed Mussolini who did not want the population or his party to think that he was relying on the Catholic vote for his survival. Consequently, in the speech he gave to the *Camera* on 13th May 1929 he strongly reaffirmed the principle of the freedom of the

sincera gratitudine, ben riflettendo che senza l'autorevole suo intervento, l'esiziale evangelizzazione avrebbe già preso considerevoli proporzioni. D'altra parte . . . il lavoro dello pseudo pastore di Formia è quanto mai assiduo ed alacre per cui sarebbe necessario trovar modo di fargli respirare altra aria, perché qui mi va pervertendo parecchi giovanetti di belle speranze con le sue lusinghiere attrattive specialmente di sport a cui non si può fare concorrenza.' For the letter in full see: ACS, Serie P.S. 1920-45, Divisione A.G.R., Categoria G.1, b. 147, f. 26, sottofascicolo 6; file missing in January 2003, but cited in Scoppola, *Il fascismo e le minoranze evangeliche*, p. 337.

¹⁵⁸ 'Il pericolo protestante in Italia', in *Osservatore Romano*, 19th June 1929; 'La propaganda protestante', in *L'Avvenire d'Italia*, 2nd July 1929.

¹⁵⁹ ACS, Serie P.S. 1920-45, Divisione A.G.R., Categoria G.1, b. 155, f. 116, sottofascicolo 2; file missing in January 2003, but cited in Scoppola, *Il fascismo e le minoranze evangeliche*, p. 340.

¹⁶⁰ ACS, Serie P.S. 1920-45, Divisione A.G.R., Categoria G.1, b. 155, f. 116, sottofascicolo 5; file missing in January 2003, but cited in Scoppola, *Il fascismo e le minoranze evangeliche*, p. 342.

¹⁶¹ ACS, Segreteria particolare del Duce (SPD), Carteggio riservato, b. 64, f. 404/R, 'Tacchi Venturi padre Pietro', sottofascicolo dal '24 al '31, inserto F, anno 1929; file missing in January 2003, but cited in Scoppola, *Il fascismo e le minoranze evangeliche*, p. 340.

non-Catholic religions. Pius XI responded immediately in the letter to Cardinal Gasparri on 30th May insisting that the new '*culti ammessi*' status did not imply freedom of propaganda for those groups. A feeling of unease was becoming evident in the Vatican hierarchy: the collaboration between the Church and the Fascists was not wholly to the satisfaction of the Pope. During the thirties, the Fascist State, despite the pressure it put on Protestant organisations, was not always as accommodating to the demands of the Church as the latter would have liked. Indeed Alfredo Rocco, although interested in preserving the national character, was not always so keen to preserve a national religious identity. In 1931, the confrontation between the Church and the Fascists over Catholic Action and education also included differences of opinion over the issue of the Protestants. The year after, in an audience with Mussolini, Pius XI took the opportunity of the renewed truce to once more raise the question of the Protestants and to re-emphasise that the religious monopoly in Italy was the prerogative of the Catholic Church.¹⁶² Scoppola claims that at no time during the moments of major tension with the Vatican (1931-2: the restructuring of Catholic Action; and 1938: the Fascist alignment with Nazi Germany) did the Fascists exploit this obviously sensitive issue.¹⁶³ The reasons for this are, in fact, quite simple: no matter what state relations were in, the regime was acutely aware of the Church's influence over the Italian populace and its ability to help maintain national unity; the evangelical churches, on the other hand, were tiny, uncoordinated and thus inconsequential to a regime obsessed by great numbers and power.¹⁶⁴

Apart from random complaints by Catholics regarding the activities of the Protestants, there was also a more sinister, organised campaign against the Protestant denominations during this period, organised by Catholic Action. The success of this campaign was such that Mussolini felt obliged to send a telegram to Italian embassies abroad on 29 May 1931 claiming that 'the Church's exaggerated and presumptuous complaints against the activities of the Protestant Churches was the main cause of the conflict' of that year. He also accused the Catholic Church of seeking 'the suppression of Protestant propaganda and of freedom of worship'.¹⁶⁵ What he failed to mention was that his government had been collaborating with the

¹⁶² Giovagnoli, *La cultura democristiana*, p. 54.

¹⁶³ Scoppola, *Il fascismo e le minoranze evangeliche*, p. 332.

¹⁶⁴ *Ibid.*, p. 333.

¹⁶⁵ Pollard, *The Vatican and Italian Fascism*, p. 108.

Catholic Church against the Protestants on this issue – possibly from as early as 1926.

The situation worsened for the Protestants in 1935-1936 during which time Catholic Action youth groups were responsible for direct attacks on Protestant churches. In June 1936 the Prefect of Matera informed the Minister of the Interior that a local parish priest was inciting his youth group to join with him in his quest to ‘distruggere i protestanti del luogo’ with the warning that if the authorities did not stamp them out, then the Catholic youth would make them ‘ruzzolare per la montagna.’¹⁶⁶ Scoppola suggests that to understand the individual actions of priests, bishops and other ecclesiastics

sarebbe necessario risalire agli stati d’animo, alla mentalità e alla cultura che hanno determinato quegli atteggiamenti. Ritengo che apparirebbe, nella maggior parte dei casi, la buona fede e l’onestà.¹⁶⁷

He calls on us to be sympathetic to the demands, theology, hierarchical pressure and juridical position of the Catholic Church and attempts to rationalise its intolerance ‘come una espressione logica e storicamente coerente di un certo tipo di religiosità.’¹⁶⁸

Despite the increase in activity against the Protestants over the latter part of the 1930’s and into the early 1940’s, gradually, after 1938, there was disseminated in Catholic intellectual circles an idea that maybe religious liberty, even among non-Catholic denominations, was indivisible from the other liberties. Such a philosophy, however, contradicts the vast body of evidence of Catholic collaboration with the regime against the evangelical churches that occurred at the same time. Scoppola explains this dichotomy as being a slow process that appears to have evolved from the confusion of war and the start of the resistance movement, but which was more evident among the Catholic *élites*, such as the *Movimento laureati* or *FUCI*, than among the Catholic masses.¹⁶⁹ Such views were certainly not evident in the mainstream Catholic press, which continued to campaign vociferously throughout the 1940’s and beyond against the ‘liberal’ concept of liberty as proposed by the

¹⁶⁶ ACS, Serie P.S. 1920-45, Divisione A.G.R., Categoria G.1, b. 146; file missing in January 2003, but cited in Scoppola, *Il fascismo e le minoranze evangeliche*, p. 344. For more examples of Catholic ecclesiastics’ role in the oppression of the evangelicals, see Scoppola, *Il fascismo e le minoranze evangeliche*, pp. 362-363 & ACS, Serie P.S. 1920-45, Divisione A.G.R., Categoria G.1, n. 703, b. 76, fascicolo sulle associazioni sovversive, Pentecostali ed altre sette religiose.

¹⁶⁷ Scoppola, *Il fascismo e le minoranze evangeliche*, pp. 367-368.

¹⁶⁸ Ibid., p. 368.

¹⁶⁹ Ibid., p. 366.

Protestant churches. Perfectly illustrating its position was a list of modern liberties worthy of condemnation which was published in *Civiltà cattolica* in 1945:

Il Liberalismo per 'libertà di pensiero' intende non già soltanto la libertà di quel pensiero illuminato e saggio, che è scorta al ben vivere e al ben operare, ma anche del pensiero fuorviato per i sentieri rovinosi dell'errore; per 'libertà di parola e di stampa', il diritto di esprimere con la parola e con gli scritti qualsivoglia dottrina in materia morale, religiosa e sociale, benché infetta di impietà e immoralità . . . di ammaestrare indifferentemente nelle vie di virtù e di vizio; per 'libertà di coscienza', il diritto o di onorare Dio o di non onorarlo; per 'libertà di culto', il diritto di professare qualsiasi culto, anche se essa viola i dettami della morale, anche se viene riprovato da Dio; per 'libertà di religione', la completa indifferenza delle leggi e delle istituzioni civili verso qualsivoglia forma di religione; per 'libertà di associazione', il diritto di unirsi ad altri per qualunque fine anche illecito.¹⁷⁰

c) *The actions of the Protestant minorities*

Prior to the fall of Fascism, the minority religious groups, as we have seen, had little or no room for manoeuvre in their day-to-day operations, especially outside the confines of their places of worship. For a few months after July 1943, the political climate allowed them to become more active. Indeed, various *valdese* youth and intellectual groups, influenced by the teachings of the Swiss theologian Karl Barth, organized a number of 'giornate teologiche del Ciabàs'. One of these, held on 2nd to 3rd September 1943, two months after the fall of Fascism, had as its theme the Concordat and Church/State relations. A final declaration containing a strong 'separatist' element was unanimously agreed:

La Chiesa Valdese dichiara:

- la Chiesa Cristiana deve reggersi da sé, in modo assolutamente indipendente;
- la Chiesa Cristiana non deve pretendere per sé alcuna condizione di privilegio;
- la Chiesa Cristiana non può però rinunciare alla rivendicazione della più ampia libertà di coscienza, di culto, di opinione, di propaganda, di proselitismo per tutti;
- la Chiesa Cristiana deve rivendicare il principio della separazione nei rapporti tra chiesa e stato, con il regime nel quale, meglio che in ogni altro, essa può svolgere la propria opera con quella libertà che proviene dalla Parola di Dio;
- la Chiesa Cristiana deve riaffermare che qualsiasi ingerenza o restrizione esercitata dallo stato sulle sue attività o sullo sviluppo della sua vita interiore,

¹⁷⁰ A.Oddone, 'Libertà moderne', in *Civiltà cattolica*, 1945, III, pp.75-6.

al pari di qualsiasi privilegio, lederebbe il suo diritto e la sua autonomia, la falserebbe come chiesa e tenderebbe a distruggerla. Senza questa completa libertà civile lo stato non potrà mai trovare la chiesa consenziente a motivo della fedeltà al suo divino mandato.¹⁷¹

Although this declaration had little status initially, on 8th September 1943 it was presented to and approved by the *Sinodo valdese* and, with some ‘mutilations’ as Long puts it, it became the official viewpoint of the whole Valdese Church. The main sections omitted were the expressions ‘libertà di opinione, di propaganda, di proselitismo’ which were substituted by the more generic ‘libertà di testimonianza’ and the entire fourth point relating to separation of Church and State – something that would certainly have caused consternation in the Catholic Church. This document would become the blueprint for all future debate on Church/State relations for the Valdese Church. This, along with the new post-Fascist political climate, created a short-lived optimism for the future of the minority religions in Italy.¹⁷²

The optimism was short-lived because of the creation of the Repubblica di Salò which covered those areas of Italy that were still under German occupation in the autumn of 1943. At the Congresso di Verona, the new Partito Fascista Repubblicano presented a manifesto known as the Carta di Verona, approved on 17th November 1943, which acted as the new regime’s constitution. In this constitution, articles 6 and 7 were of particular significance. According to article 6, “La religione della Repubblica è la cattolica apostolica romana. Ogni altro culto che non contrasti alle leggi è rispettato.” In article 7, “Gli appartenenti alla razza ebraica sono stranieri. Durante questa guerra appartengono a nazionalità nemica.”¹⁷³ Clearly the first clause of article 6 would be a cause of major concern for Protestants. Although the second clause claimed to respect other religions, it would have been little comfort to them that this was provided they did not conflict with existing legislation. But there were also reasons for the Catholic Church to have reservations about this article. In the first place, it weakened the formulation in the 1929 Treaty according to which it was the *only* religion of State. Secondly, the Church would have been aware of the strong Nazi influence of the document as a whole, and there were good reasons from its experience in Germany not to place too much faith in Nazi good-will towards the Vatican. Additionally, the Vatican had by now become an important interlocutor

¹⁷¹ *Resoconti delle Giornate teologiche del Ciabàs dedicate al tema: Concordato e separazione nei rapporti tra Chiesa e Stato*, special edition of the magazine *L'Appello*, 1943, pp. lxxvii – lxxviii. See also Long, *Alle origini del pluralismo confessionale*, pp. 249-250.

¹⁷² Long, *Alle origini del pluralismo confessionale*, p. 251.

¹⁷³ For the full text of the Carta di Verona see www.romacivica.net/anpiroma/rsi/rsicartadiverona.htm.

with the U.S. State Department on the future of Italy. It was for these reasons that the Vatican refused to recognise the Carta di Verona. Although in article 7 it was the Jews who were officially classified as a foreign race, this was a clear intensification of national suspicion which the Protestants had also experienced under Fascism.

That the situation had deteriorated in this respect, is clearly argued by Brunello Mantelli, who points out that following the Carta di Verona deportations increased significantly. More than 9000 Jews (8000 of whom died) were deported to extermination camps, mainly Auschwitz, and more than 30,000 other Italians, as opponents of Fascism and National Socialism, were deported to other camps such as Mauthausen and Dachau. Fewer than one tenth of these survived.¹⁷⁴

Added to these reasons for Protestant apprehension was a massive expansion and recruitment drive by Catholic Action across the whole of Italy in 1944. Thus, the optimistic mood that had permeated the minority religions in the summer of 1943 had changed to one of alarm by 1945. But even after liberation, Long points out that too many elements of the old regime were still in force: from profoundly compromised personalities still occupying positions of responsibility to residues of a typically fascist mentality, certain obstinate aspects of which remained opposed to change.¹⁷⁵ Scoppola agrees that fundamental and deep-rooted opinions needed to be changed before true freedom and equality between the religions was realised: the lingering hostility in Catholic circles towards the evangelicals even after the fall of Fascism and the fact that such hostility would last until the Second Vatican Council, makes one reconsider the effectiveness of the new democratic Republic's constitutional guarantees.¹⁷⁶ What was more important was the development of a widespread and deep-rooted understanding of the value of true religious freedom. Without this, intolerance would continue to plague the lives of all non-Catholics.

In an article published in the Baptist newspaper 'Testimonianza' in 1945, its editor, Manfredi Ronchi, took up the argument:

One has to say that it is very strange that, since the fall of Fascism, the *culti ammessi* laws should continue to be interpreted by those same circulars and dispositions that allow implementation of the laws in a restrictive and police-orientated manner. We understand that at the moment of transition between governments, it was not possible to abrogate the laws, but we do not understand why the Ministry of the Interior, or whomsoever is acting on its

¹⁷⁴ For more detail see B.Mantelli "Repubblica sociale italiana", in B.Bongiovanni and N. Tranfaglia, *Dizionario storico dell'Italia unita*, Roma/Bari, Laterza, 1996, pp. 756-769.

¹⁷⁵ Long, *Alle origini del pluralismo confessionale*, p. 254.

¹⁷⁶ Scoppola, *Il fascismo e le minoranze evangeliche*, p. 367.

behalf, is still waiting to abrogate those various Fascist inspired administrative dispositions; and why it is still waiting to issue a new circular abolishing all the administrative apparatus surrounding the laws and the relative regulations which put religious freedom at the mercy of the Prefects.¹⁷⁷

In 1945, with the support of the *Sinodo valdese*, there was another attempt to bring all the Protestant churches under one organisation with the hope that it would bring an end to 'ogni residuo di Stato confessionale'.¹⁷⁸ In the spring of 1946, the *Consiglio federale delle Chiese evangeliche* was formed, one of its principal early functions being to lobby the Constituent Assembly. Initially it only included a few of the major Protestant churches with more asking to be represented in 1948.¹⁷⁹ Immediately after the war, the Protestants looked not only to the Constituent Assembly, but also outside Italy, for support. In America committees for religious liberty in Italy were set up and, to counterbalance the lack of faith they were beginning to have in the Italian government, great confidence was placed by the Protestants in the ability of the United Nations to intervene at an international level on their behalf.¹⁸⁰

An important point to consider here is how widely was the suffering of the Protestants known? The vast majority of the population, even in Protestant strongholds such as the Valdese region and the Val D'Aosta, were Catholic and would therefore consider them at best an irritation and at worst would be actively trying to shut them down, possibly informing the police of their activities. In such cases, who could the Protestants turn to? They did not consider themselves to be adequately protected by the police under Fascism. Hence their desire for action at a European level to ameliorate their situation. So, in Italy, recognition, let alone acceptance, was proving to be an uphill struggle for the Protestant denominations. In January 1946, Manfredi Ronchi, editor of the Baptist newspaper 'Il Testimonio', sent a letter to the National Council of the Christian Democrats, as well as to the Central Committee of the Socialist Party, both of whom were meeting the same day, calling for both organisations to put religious freedom on the agenda at their forthcoming

¹⁷⁷ My translation of M. Ronchi, 'Punti e linee', in *Testimonianza*, 1945, p.124; cited in Long, *Alle origini del pluralismo confessionale*, p. 254.

¹⁷⁸ Ibid., p. 252.

¹⁷⁹ The denominations that formed the Federal Council of Evangelical Churches in 1946 were the Valdesi, the Episcopal Methodist and the Wesleyan Churches (later unified), the Baptist Evangelical Church of Italy and the La Spezia Mission. In 1948 the 7th Day Adventists, the Pentecostals, Church of the Brotherhood and Salvation Army asked to be represented. See Long, *Alle origini del pluralismo confessionale*, p.253 for more information.

¹⁸⁰ Ibid., pp. 255-256.

congresses. Ronchi makes clear his disappointment that the question has, up to that point, been ignored by the big political powers, but hopes that the issue will soon be discussed as all other freedoms are based on it.¹⁸¹ In an article for the Protestant journal 'Testimonianza', Ronchi limited his proposals on religious liberty to four main points: 'equality among citizens, freedom of association for religious ends, freedom of propaganda, freedom to choose one's faith only within the limits of morality and not public order (since the profession of a faith other than that of the majority can not be considered a provocation or a mockery).'¹⁸² Such apparently reasonable proposals were a rarity, with the Protestant press continuing to campaign belligerently. Having irritated the Catholic Church, Protestant newspapers were now straining relations between their denominations and the political parties in the run-up to the institutional elections: 'se le elezioni, come è sperabile, ci daranno la Repubblica, ed una repubblica democratica, questa impone la separazione della Chiesa dallo Stato', was typical of their bullish, undiplomatic approach to the argument.¹⁸³

Although conditions for the religious minorities were difficult under Fascism, and post-Fascism their entrenched, hard-line tactics did little to help their condition, worse was to come under the Vatican-backed Christian Democrat regime of the late 1940's and 1950's when the systematic harassment of the non-Catholic minorities reached a new level of intensity, as we shall see in section C(v)a).

¹⁸¹ Ibid., p. 262.

¹⁸² 'Per la libertà religiosa', in *Testimonianza*, Feb. – March 1946, p.27ff; cited in Long, *Alle origini del pluralismo confessionale*, p. 262.

¹⁸³ 'Libertà o accordi', in *Unione evangelica*, 15th March 1946.

A3) Religious freedom for Catholics

(i) The Vatican on 'religious freedom'

The general position of the Vatican on the subject of religious freedom had been established towards the end of the 19th century in one of the major encyclicals of Leo XIII, *Libertas* (1888),¹⁸⁴ whose ideas remained valid until the Second Vatican Council in 1963. But there was one key difference between the concept of religious freedom as viewed from a Protestant perspective and from that of the Catholic Church: whereas the Protestants were keen to be inclusive in their approach to the issue (in other words they wanted equality of status for all religions including Catholicism), the Vatican was much less magnanimous in that all of its pronouncements on the issue from unification up to the 1950's were made purely in relation to the wholeness of the truth on faith and morals as taught by the Catholic Church.¹⁸⁵ This was due partly to the fact that after the newly unified Kingdom of Italy had wounded the Vatican's pride with the annexation of the Papal States, the Vatican felt the need to reclaim for itself a position of spiritual and moral authority. More importantly it needed to re-establish its temporal sovereignty which it eventually achieved via the Lateran Treaty creating Vatican City State in 1929. It then turned its attention to what it perceived to be the greatest threats to the Church and the Italian people: secularism, liberalism, atheist Communism and Protestantism – in short, anything that was not Catholicism. Often, Fascism is also included in this list of threats to the Church, but I would suggest that even though they were uncomfortable bedfellows, with at times a mutual suspicion of each other's intentions, there was also the sense of a shared aim – to govern Italy absolutely by their own principles and to the exclusion of all other political and religious influences. Such an aim led to what Conway calls a

ghetto mentality . . . in which the faithful were enclosed as far as possible within a self-contained network of Catholic social and cultural organisations, and contact with those beyond the faith was seen either positively as an opportunity for evangelism or negatively as a source of danger, but rarely as an opportunity for mutual discussion.¹⁸⁶

¹⁸⁴ Carlen, C. (Ed.), *The Papal Encyclicals (5 Volumes)*, Raleigh (U.S.A): The Pierian Press, 1990, (Vol.: 1878-1903), pp. 169-181.

¹⁸⁵ Long, *Alle origini del pluralismo confessionale*, p. 211.

¹⁸⁶ Conway, *Catholic Politics in Europe: 1918-1945*, p. 100.

This sectarianism, exploited by the Church particularly through the work of Catholic Action, manifested itself in the integralist ambitions of the Christian Democrat deputies during the years of the Constituent Assembly and was only tempered under the pontificate of John XXIII and the Second Vatican Council.

In criticizing the Church's social doctrine, Gramsci suggested that

the Church is willing to fight only to defend its own particular organizational freedoms (those of the Church as a church, an ecclesiastical establishment), that is the privileges that it declares to be owed to its divine essence Everything else is of relatively minor importance unless it somehow affects the conditions of the Church's existence. Thus by 'despotism' the Church only means the exercise of state power to limit or suppress Church privileges, not much more than that. The Church recognises any *de facto* power whatsoever, and is willing to legitimise it provided it does not encroach on those privileges. Indeed, if it should be willing to increase those privileges, then the Church will exalt it and declare it providential.¹⁸⁷

The reciprocal collusion between the Church and Fascism was seen by Gramsci and others among the laity as illustrating how the Church had been 'irrimediabilmente ridotta a mero *instrumentum regni*, che difende i suoi interessi e la sua stessa presenza storica con le sue organizzazioni e con la politica concordataria'.¹⁸⁸

During the war, the Church's attitude to religious freedom remained unchanged. Ironically, after the war, one fundamental principle regarding religious freedom was trumpeted by the Catholic Church: no-one could have a faith forced upon them. This was particularly significant for the non-Catholic religions who, in spite of this ideal, continued to suffer both at the hands of the authorities and the Catholic Church. But why would the Church risk making itself look foolish in the light of current, recent and even historical events? Firstly, the Church was keen to make the distinction between itself and totalitarianism; and, secondly, the average Italian Catholic voter would have had little or no knowledge of what was happening in the rest of Europe at that time and so the Church was able to make such a statement as a timely repost to those 'laici' who accused the Church of being against religious freedom.¹⁸⁹ The position was reaffirmed in October 1946 by Pius XII in a speech given to mark the opening of 'l'anno giudiziario della Sacra Rota':

¹⁸⁷ My translation of A. Gramsci, *Note sul Macchiavelli, sulla politica e sullo stato moderno*, Torino: Einaudi, 1949, p.239; cited in Poggi, *Catholic Action in Italy*, p. 9.

¹⁸⁸ N. Antonetti, *L'ideologia della sinistra cristiana: I cattolici tra Chiesa e comunismo (1937-1945)*, Milano: Franco Angeli Editore, 1976, p. 36.

¹⁸⁹ Long, *Alle origini del pluralismo confessionale*, p. 214.

I sempre più frequenti contatti e la promiscuità delle diverse confessioni religiose entro i confini di un medesimo popolo hanno condotto i tribunali civili a seguire il principio di 'tolleranza' e della 'libertà di coscienza'. Anzi vi è una tolleranza politica, civile e sociale verso i seguaci delle altre confessioni, che in tali circostanze è anche per i cattolici un dovere morale. Nessuno venga costretto contro la sua volontà ad abbracciare la fede cattolica. Questo canone, che riproduce le parole del nostro grande predecessore Leone XIII nell'enciclica *Immortale Dei* del 1° novembre 1875, è l'eco fedele della dottrina insegnata dalla Chiesa fin dai primi secoli del Cristianesimo.¹⁹⁰

Leaving out of consideration the Crusades and the Spanish Inquisition, Pius' speech ignores the forced and brutal mass conversion to Catholicism of Jews, Muslims and other faiths in Croatia during the war. In fact the Jewish Question as tackled by the Nazis was only surpassed by the horrors perpetrated by Dr. Ante Pavelic's Ustasha troops in Croatia. Although Pavelic had received an audience with the Pope in 1941, once the true extent and horror of his actions were realised by the Vatican, his exalted status changed to that of an embarrassing liability; and despite Pavelic's frequent subsequent attempts to receive a further audience with the Pope, it is clear that from May 1943 onwards, Vatican officials did everything in their power to prevent such a meeting and to avoid the inevitable damage to the Holy See's image as a neutral, benevolent institution.¹⁹¹

(ii) The Catholic Church as an 'ordinamento originario'

The term 'ordinamento originario' refers to any institution or body whose juridical authority is not derived from any other institution.¹⁹² The concept of the Church as an 'originary' institution with its own juridical system goes back centuries.¹⁹³ However, the Church's claim to *originarietà* is ontological in nature rather than chronological, and so, notwithstanding arguments over its roots, it is worth noting

¹⁹⁰ Cited in *ibid.*, p. 215.

¹⁹¹ Blet, P., Martini, A., Schneider, B., (Eds.) *Actes et documents du Sainte Siège relatifs à la seconde Guerre Mondiale* (ADSS), Città del Vaticano: Libreria Editrice Vaticana, 1965-1981, Vol. IV, Docs. 351, 352 & 354-358, pp. 493ff.; and Vol. VII, Doc. 193, p. 337.

¹⁹² Stefano Riccio (Dc) gave a clear description of the term during the Constituent Assembly debates: 'La originarietà dell'ordinamento giuridico della Chiesa significa che esso è a sè, distinto ed indipendente. La Chiesa ha una potestà normativa che non le deriva dallo Stato, ma che è ad essa propria ed originaria, in quanto essa si presenta come una istituzione organizzata e che ha conseguita una giuridica unità, la quale oltrepassa i confini dello Stato. I caratteri della indipendenza e sovranità, fissati cumulativamente, indicano precisamente la originarietà di quest'ordinamento, cioè l'asseità, nel senso che essa è un ordinamento per sé stante, il cui fondamento non deriva dal riconoscimento di un altro ordinamento. La sovranità della Chiesa, che non è legata al territorio, ma è un dominio spirituale, e, perciò, supera ed abbraccia il territorio del singolo Stato, è una realtà storico-sociale, ormai non più disconoscibile'. CRAC, Vol. 1, pp. 387-8.

¹⁹³ Reese, Father Thomas J. (S.J.), *Inside the Vatican: The politics and organisation of the Catholic Church* Cambridge (Mass.), Harvard University Press: 1996, p. 279.

that *originarietà* became a major issue for theologians following the annexation of the Papal States between 1859 and 1870. The latter was effectively a challenge by the Italian State to this concept of *ordinamento originario*, which implied that the Catholic Church, in the same way as any other religion, should be free to operate within the juridical and authority confines of the State. Cavour put this quite neatly when he said there should be a 'libera Chiesa in libero Stato'. This idea was denounced vehemently by Pius X as interference by the State in Church matters with the ensuing impasse becoming known as the Roman Question.¹⁹⁴

While negotiations to end the problem in the form of the Lateran Pacts were under way, Pius XI declared that he wanted a 'Trattato inteso a riconoscere . . . alla Santa Sede una vera e propria e reale sovranità territoriale'. Sovereignty, he declared, 'è evidentemente necessaria e dovuta a Chi . . . non può essere suddito di alcuna sovranità terrena'.¹⁹⁵

Giovagnoli suggests that from the encyclical *Quas primas* (promulgated on 11th December, 1925) and from the doctrine of the Kingship of Christ, it was possible to trace elements of religious opposition to reactionary movements and regimes across contemporary Europe. The most striking and significant aspect of that opposition was a vigorous reaffirmation of the primacy of religion over politics and of the Church over the State – the natural consequence, in the opinion of the ecclesiastical hierarchy, of the idea of the Church as an 'ordinamento originario'.¹⁹⁶ This idea of the superiority of Church and religion over State and politics is reflected in the predominance of Vatican biased articles in the Lateran Pacts and was also a key theme for Catholic politicians during Italy's post-war political reconstruction.¹⁹⁷ This is not to argue that the Church was seeking direct legislative authority. The Church's teachings that the Church and State are each sovereign in their own spheres, and that the laity are required to obey the legitimate authorities, are quite compatible with it seeking increased influence, since it had also traditionally taught that its own teachings in matters of faith and morals should be followed not simply

¹⁹⁴ See Section A1 (i) of this thesis.

¹⁹⁵ Pio XI, *Discorsi*, 1929-1933, vol. II, Città del Vaticano 1985, p. 9.

¹⁹⁶ Giovagnoli, *La cultura democristiana*, p. 42.

¹⁹⁷ However, by the time of the Constituent Assembly, the Church was putting out mixed messages as to whether Church or State was dominant. The following is an extract from a letter published in *L'Osservatore Romano* on 19th September, 1946: 'I sovrani Pontefici hanno affermato a più riprese che la Chiesa non intende menomamente ingerirsi negli affari politici dello Stato. Essi hanno insegnato che lo Stato è sovrano nel suo proprio dominio. Hanno rigettato come una calunnia che una propaganda perfida attribuisce alla Chiesa di volersi impadronire del potere politico e dominare lo Stato. Essi hanno ricordato ai fedeli il dovere della sommissione ai poteri stabiliti.'

by individuals but also by temporal rulers. Given the wide purview of what is covered by these qualifications, the Church could aspire to exercise considerable hegemony. And the Lateran Pacts were a step in achieving such hegemony.

The juridical nature of the Treaty required a ‘moral completion’: in order to achieve this Pius XI wanted ‘un concordato che assicurasse l’influenza cattolica nel Regno d’Italia’ and sought to guarantee that ‘la religione cattolica fosse effettivamente e non solo di nome la religione dello Stato’.¹⁹⁸ As we have seen, the Lateran Pacts returned a small amount of temporal power and territory to the Church in the form of Vatican City State, but the prestige it regained as a sovereign state was immeasurable. Consequently, the Church revived its claim to be an *ordinamento originario* and this became a key theme in the Debates over article 7 in the Constituent Assembly.

According to Gianni Long, it was an illustrious figure in Italian ecclesiastical law, Santi Romano, whose theory of the Catholic Church as necessarily independent, having its own *ordinamento originario* and thus needing relations with the State based on concordats, whose influence permeated the culture of the *costituenti* and can be clearly seen in the wording of final articles 7 and 8 of the Constitution.¹⁹⁹

In fact, in an article written for the *Dc* newspaper ‘Il Popolo’ on 4th March 1947 Aldo Moro said that two of the great achievements of the *Dc* deputies in the Constituent Assembly are the ‘affermazione dell’indipendenza della Chiesa e della originarietà del suo ordinamento’ and the ‘richiamo costituzionale dei Patti Lateranensi’. These issues, ‘sincerely defended by Christian Democrat deputies’, constituted for Moro ‘una concreta garanzia di quella democraticità del nuovo Stato, la quale sembra essere nei voti di tutti’.²⁰⁰

(iii) The role of concordats

Despite the huge emphasis Pius XI placed on the development of Catholic Action organisations throughout Italian society, at a political level he preferred diplomatic action – usually in the form of concordats – to action from below by a Catholic political movement.²⁰¹ In fact, during the inter-war years, he signed forty diplomatic

¹⁹⁸ Cited in Giovagnoli, *La cultura democristiana*, p. 46.

¹⁹⁹ Long, *Alle origini del pluralismo confessionale*, pp. 308-9. See also Dossetti’s speeches in the Constituent Assembly (collected in such works as G. Dossetti, *La ricerca costituyente: 1945-1952*, Bologna: Il Mulino, 1994; G. Dossetti, *Costituzione e Resistenza*, Roma: Sapere, 1995 and CRAC (8 Volumes) cited above.

²⁰⁰ Moro, A. *L’apporto democristiano alla nuova Costituzione*, in ‘Il Popolo’, 4th March 1947, p.1.

²⁰¹ Poggi, *Catholic Action in Italy*, p. 21.

concordats with national governments including Poland in 1925, with Mussolini's Italy in 1929 and, most controversially, with Nazi Germany in 1933. Concordats were only the first step in Pius' plans for the Church. They guaranteed the legal independence of the Church from state control, thereby providing 'the freedom for its spiritual and cultural organisations to pursue their apostolic work'.²⁰²

One of the key players in creating and negotiating these concordats was Cardinal Eugenio Pacelli, later Pope Pius XII. The single aim that ran through Pacelli's diplomatic policy from the Serbian Concordat negotiations of 1913 to the conclusion of the Reich Concordat in 1933 was that the Code of Canon Law should be the foundation of the essential legal presupposition of the concordat.²⁰³ This involved not only official recognition by the government in question of the legislation of the Church, but also the adoption of many provisions of this legislation and the protection of all Church legislation. In Pacelli's eyes, the historic victory of the Reich Concordat was entirely the Holy See's; for the treaty emphatically did not mean the Holy See's approval of the Nazi state, but, on the contrary, the total recognition and acceptance of the Church's law by the state. In fact, the Church claims that it was critical of these regimes in the encyclicals *Quadragesimo Anno* (1931) and *Umani Generis Unitas* (1939). However, Gianni Long makes an interesting point regarding such claims:

non poche difficoltà sono create da Stati che hanno recentemente stipulato con la Chiesa dei concordati per essa molto favorevoli. E ciò appare evidente sia nella *Non abbiamo bisogno* (1931) in cui è criticato il fascismo italiano; sia nella *Mit brennender Sorge* (1937) il cui obiettivo è costituito dal nazismo tedesco. Gli argomenti avanzati nelle due encicliche suonano condanna dei due regimi; ma esse sono specificamente rivolte a protestare per le angherie subite dai cattolici (soprattutto in materia scolastica) e per le violazioni delle norme concordatarie. Non sono il nazismo e il fascismo in sé ad essere condannati, ma i loro comportamenti anticattolici.²⁰⁴

It may be tempting to dismiss these comments by Gianni Long, himself a Waldensian, on the basis of what can certainly be argued to be a faulty conclusion, and a misleading presentation of the purpose of the encyclicals in question. But this would

²⁰² Conway, *Catholic Politics in Europe*, p. 41.

²⁰³ Pacelli himself was a member of the Commission set up by Pius X in 1904 to revise the old *Acta apostolicae Sedis* and played a major role in creating the new Code of Canon Law which was ratified on 19th May 1918. The new Code contained all ecclesiastical laws still in force, condensed into 2414 canons in five volumes, ostensibly for ease of consultation: but the new codex also served the much more significant function of focussing ecclesiastical authority on the Pope. For more information see www.iubilatedeo.it/storiachiesa/BenedettoXV.htm

²⁰⁴ Long, *Alle origini del pluralismo confessionale*, pp.212-13.

be to miss the main point of his comments. Let us analyse the argument, dealing in the first place with the more questionable aspects of what he states.

The encyclicals in question, unlike Pius XI's *Divini redemptoris* (1937) on Communism and its conflict with Catholic social teaching as such, were not primarily directed at doctrinal issues. *Non abbiamo bisogno* (1931) was specifically 'On Catholic Action in Italy' and *Mit brennender Sorge* (1937) was 'On the Church and the German Reich'.²⁰⁵ Given the purpose of the encyclicals, the Pope could hardly be blamed for focussing on the problems faced by Catholics. In the case of the 1931 encyclical, it responded to attacks on Ac in the Fascist press, and to a campaign being conducted to disband separate Catholic youth and student associations. Doctrinal issues never surfaced, and condemnations of the regime are limited to its bullying, intimidation, lying and violence. By 1937 in Germany, however, attacks on the Church were not simply of the latter kind, but Nazism had developed a substantial corpus of powerful but pernicious ideas in its ideology.

It is perhaps at this point that Long's comments are most open to question. A millennial tradition of papal encyclicals has bred an attention to context and focus, and a reluctance to step outside these boundaries, which often produces in the reader (both Catholic and non-Catholic) an impatience with what seems an excessive caution. Encyclicals are rarely a straightforward letter from the Pope himself, but the end-product of drafts by trusted officials and experts attentive to the orientation and complexities of papal requirements at the time. It is thus not surprising that attacks on Nazism, in *Mit brennender Sorge*, should arise in the contingent context of relations between Catholics and the Reich.

Having said this, and taking account of the encyclical's purpose, it is difficult to see that its attacks on 'pantheism' (section 7 in Carlen's edition); on the exaltation of race, people, the state or forms of the state (section 8); on doctrines of race and blood, and on 'patriotic' forms of religion (section 23); on the idea of the so-called 'German type', can be seen as anything but condemnations of Nazism at root. The encyclical may be careful to link these ideas with the experience of Catholics in Germany, no doubt in order to keep within the terms of its chosen remit, but the condemnations are on the basis of broad Christian principles which are not sectarian, and leave little doubt about their purpose.²⁰⁶

²⁰⁵ These are the subtitles provided in Carlen, *The Papal Encyclicals*, Vol. III.

²⁰⁶ I am indebted to discussions with Professor Gino Bedani on these matters.

Long has made the mistake of succumbing to the 'impatience' referred to earlier in connection with papal encyclicals, and opened himself to the charge of unfairness to an institution which, in other respects, was his own oppressor. He could have made the real substance of the point he was intending to make in connection with concordats and the problems this causes the Church, which was in effect a sympathetic point, more effectively. He could justifiably have pointed towards the limitations imposed on the German encyclical, in terms of both space and context, given to its condemnations of Nazism, by the Church's own political involvement with regimes, by comparing it with its ability to devote a whole encyclical, *in the same year*, to a full blooded attack on atheistic Communism, where it was free of such restraints (*Divini redemptoris*).

In reality, of course, the Church was keen to project the Pacts as a victory for Catholicism, but as Scoppola points out,

cultura e mentalità cattolica erano state tuttavia profondamente segnate dalla esperienza delle 'compromissioni'. . . con il regime: l'idea che lo Stato dovesse assicurare alla Chiesa una condizione di privilegio legale era radicata nell'episcopato e nel clero. La difesa del Concordato del '29 diventerà perciò uno dei cardini delle rivendicazioni cattoliche nella fase costituente.²⁰⁷

The Lateran Pacts, like all the other concordats signed during this period, are less of a comment on the Church's propensity to collaborate with governments of any political ilk, but rather an indication of its ability in times of strife and upheaval to see beyond the present and lay solid foundations on which to build its future political and spiritual ambitions. Jemolo makes an apposite comment when he says that

negli Accordi lateranensi vedono soprattutto una carta, quella della influenza politica del papato e dei partiti cattolici stranieri, posta al servizio della futura politica estera e coloniale italiana, e . . . che gli Accordi lateranensi valgono non per quello che liquidano del passato, bensì per ciò che impegnano del futuro.²⁰⁸

²⁰⁷ Scoppola, *La repubblica dei partiti*, p. 99.

²⁰⁸ Jemolo, *Chiesa e Stato in Italia*, p. 231.

(iv) Catholic social and political ideologies: their roots in papal encyclicals

a) *Integralismo*

Papal encyclicals were a major source of Catholic integralist ambition which manifested itself principally in the work of Catholic Action.²⁰⁹ As Pius XI said in his inaugural encyclical *Ubi Arcano Dei* in 1922 and reiterated in many of his later pronouncements, Catholic Action groups were 'the organised participation of the laity in the hierarchical apostolate of the Church, transcending party politics for the establishment of Christ's reign throughout the world'.²¹⁰ There was in fact a common ideology that linked the Vatican with most Catholic working class groups: they all wanted to nurture the confessional interests of Catholicism, and both 'remained convinced that only the establishment of a society based on Catholic principles offered a durable solution to the sufferings of the working class'.²¹¹ This was a relatively novel feature of inter-war Catholicism.

The rapidly expanding Catholic student culture was strongly influenced by the militant nature of Catholic Action, which in turn were motivated by such figures as the French theologian and philosopher Jacques Maritain, whose work sought to emphasise the autonomy and distinctiveness of Catholic beliefs.²¹² In 1939, in his first encyclical *Summi pontificatus* (Of the Supreme Pontificate), known in English as 'Darkness over the Earth', Pius XII condemned the growth of secularism and what he called laicism, and called for a new world order in which all nations recognised the kingdom of Christ.²¹³

The integralism of the Vatican's political and spiritual objectives was reflected in and supported by its disciplined internal organisation: by the time of the pontificate of Pius XII, the internal life of the Church had become so centralised that the direction taken by those at the bottom of the hierarchical edifice perfectly reflected the instructions that came from the top.²¹⁴ These instructions from on high came traditionally in the form of encyclicals. The problem was that they were usually very long, complex theological documents and very often beyond the comprehension of the ordinary person. During the war, the Vatican realised the need to speak directly to the population at large to comfort them and prevent the ravages of war

²⁰⁹ For more see I. Giordani, (Ed.), *Le encicliche sociali dei Papi, da Pio IX a Pio XII (1864-1946)*, Roma: Studium, 1946.

²¹⁰ Conway, *Catholic Politics in Europe*, p. 41.

²¹¹ Ibid., p. 40.

²¹² Ibid., p. 43.

²¹³ Carlen, *The Papal Encyclicals (1939-1958)*, pp. 6-7.

²¹⁴ Scoppola, *La repubblica dei partiti*, p. 104.

from leading them away from Holy Mother Church. Broadcasting directly to the nation via the Christmas radio messages – which became known as Pius XII's 'progetto storico' – was the ideal means to do this, and it was a defining moment in the Vatican's approach to self-marketing.²¹⁵

b) *Laicità and laicismo*

Although the antithesis of *integralismo*, the concepts of 'laicità' and 'laicismo' are nevertheless inextricably linked to it. During the period of the discussions in the drafting committees for the Constitution in 1946, Aldo Moro denounced state 'laicismo' as something the Italian people did not want

quel laicismo che per forza di cose non può restare una formula di neutralità giuridica in omaggio alla libertà di coscienza e prima o poi diventa una posizione attiva, per distruggere con l'aiuto dell'indifferentismo religioso il patrimonio di religiosità del popolo italiano. Non intendiamo naturalmente accentuare le polemiche, ma crediamo di poter richiamare uomini e partiti in questa materia delicatissima che tocca la sensibilità religiosa del popolo, a dar prova di saggezza e di tolleranza.²¹⁶

This speech is Moro at his most integralist: the *stato laico* and the *scuola laica* – deemed essential pre-requisites for religious freedom by the non-Catholic religious groups in Italy – are anathema to him. To Moro such a State renders itself

pericolosamente estraneo alla coscienza morale delle persone che lo compongono, distruggendo in fatto il valore delle istituzioni, delle attività, delle leggi. Ciò tanto più in Italia, ove una straordinaria compattezza di confessione religiosa rende del tutto inattuale il problema della libera convivenza di credenti in diverse fedi.²¹⁷

He is effectively saying here that religious freedom for the minority religions is an inconsequential matter that the political parties need not bother themselves about.

In September 1946, in an article regarding the Church's involvement in State affairs, *L'Osservatore Romano* cites a speech made by Schumann (a deputy in the French parliament) on 13th November 1945.²¹⁸ The speech, supported by the Bishops

²¹⁵ Ibid., pp. 24-5.

²¹⁶ Archivio della Camera dei Deputati (ACD), Camera dei Deputati, *Inventario dell'Assemblea Costituente*, Quaderni dell'Archivio storico – No.6, Roma, Camera dei Deputati: 1999, Busta 74, Fascicolo 1, *Commissione per la Costituzione: 1° Sottocommissione. Relazione del Deputato Aldo Moro sui 'Principii dei rapporti sociali (culturali)*, p.91.

²¹⁷ Ibid., pp. 91-2.

²¹⁸ The speech was reported as follows: È tempo di dissipare un equivoco che rischia di nuocere gravemente alla unità nazionale. Esso si riferisce ad una espressione che è usata da moltissimi correntemente in molti e differentissimi sensi: la laicità dello Stato. Se con queste parole si intende proclamare la sovrana autonomia dello Stato nel suo dominio dell'ordine temporale, il suo diritto di

of France, claims that the Church had no intention of meddling in State affairs, that the State is sovereign and autonomous, that subsequent Popes have always maintained that the Church has never sought to appropriate political power or to dominate the State, and that it has reminded the faithful of their duty to subject themselves to the will of the political authorities. It is not clear if this original letter was supposed to refer specifically to the French situation or whether it was intended to be taken more as a general, theoretical position. However, the fact that *L'Osservatore Romano* deemed it necessary to offer a response to it strongly suggests that the subject matter was indeed relevant to the situation in Italy in 1946. In response to the speech, *L'Osservatore Romano* says:

Ecco in quale senso i cattolici possono accettare la parola e l'idea di laicità. È in un altro senso ancora: nel senso che lo Stato lasci ai cittadini il diritto di praticare liberamente la propria religione e adotti una sistema costituzionale in cui *la differenza di culto e di opinione religiose o filosofiche non formi eccezione al godimento dei diritti civili e politici e alla ammissibilità alle cariche civili e militari.*²¹⁹

Sulla laicità così definita ed intesa non c'è ragione di contendere, specie sul terreno politico ove è necessario trovare punti di convergenza tra le opposte parti e ridurre al minimo i contrasti. Per prendere la recente dichiarazione di un rappresentante socialista italiano, notiamo che la convergenza è evidente quando egli dice: 'Per laicismo intendo l'indipendenza del potere civile da quello religioso e l'indipendenza del potere religioso da quello civile.' A parte l' 'ismo' che noi rifiutiamo perché il concetto di laicismo è amplificazione e degenerazione del concetto di 'laicità', la formula è esatta . . .

Later in the article it says:

. . . uno scrittore azionista, il Salvatorelli, sostenendo la tesi dello 'Stato laico', scriveva: 'Le chiese – e in Italia principalmente la cattolica – non sono qualche cosa di indifferente per lo Stato. Lo Stato può e deve riconoscere la

governare da solo tutta la organizzazione politica, giudiziaria, amministrativa, fiscale della società temporale e, d'una maniera generale, tutto ciò che si riferisce alla tecnica politica ed economica, noi dichiariamo nettamente che questa dottrina è pienamente conforme alla dottrina della Chiesa. *I sovrani Pontefici hanno affermato a più riprese che la Chiesa non intende menomamente ingerirsi negli affari politici dello Stato. Essi hanno insegnato che lo Stato è sovrano nel suo proprio dominio. Hanno rigettato come una calunnia che una propaganda perfida attribuisce alla Chiesa di volersi impadronire del potere politico e dominare lo Stato. Essi hanno ricordato ai fedeli il dovere della sommissione ai poteri stabiliti.* Nonostante tutte queste precisazioni si continua ad agitare di fronte alle masse il vecchio spettro di clericalismo. Se il clericalismo è la ingerenza del clero nel dominio politico dello Stato, o quella tendenza che potrebbe avere una società spirituale a servirsi dei poteri pubblici per soddisfare la sua volontà di dominazione, noi dichiariamo altamente che condanniamo il clericalismo come contrario alla autentica dottrina della Chiesa. 'Laicità dello Stato', in *L'Osservatore Romano*, 19th September 1946, p.1. (My italics.)

²¹⁹ Italicised section is identical to article 4 of the law dealing with permitted religions (24 June 1929, no. 1159).

loro utilità sociale, il loro valore morale, tutelarne le condizioni di esistenza e d'attività, sempre entro i limiti, naturalmente, della libertà religiosa e della parità dei cittadini innanzi alla legge.

Laicità, dunque, non vuol dire ignoranza . . . Lo Stato moderno, dunque, che non ignora nulla, dovrebbe ignorare solamente il fatto religioso?

La laicità non può e non deve impedire allo Stato di valutare ed utilizzare . . . i contributi che la Chiesa può recare alla vita spirituale della nazione. Essa deve significare 'distinzione' dei due poteri e non ignoranza reciproca e non separazione.²²⁰

The reference to Italian legislation clearly brings the response, if not the original letter, into the sphere of Italian, not French, politics. Nevertheless, both Pius XI and Pius XII had clearly stated on many occasions that the Church and divine law were on a superior plane to the State and civil law.²²¹ So here we have an example of a clear discrepancy between the official policy of the Vatican, as delineated by the Pope, and the pronouncements it was promulgating to the general public.

The relationship between the State and the non-Catholic religions was more complex and religious freedom in its true, pluralist sense was at the heart of the issue. Gianni Long considered that for the lay parties, religious freedom meant the equality of all citizens. For Christian Democrats 'freedom' consisted of the fact that the State should consider the minority churches as such. 'Equality' would imply an agnostic State: but a State which considers all religions as equal is, in itself, removing one's freedom, according to the Christian Democrat concept, by questioning the right of Catholics to be the dominant religion.²²²

c) *Personalismo*

As laid out in the encyclicals of Pius XI, according to Long, the traditional freedoms of the Church consist, above all, of the denunciation of the concept of the separation of Church and State, of the defence of the articles of the Concordat and of the ecclesiastical prerogatives outlined therein. But there also emerged hints of a more general defence of the 'persona umana' and its rights.²²³ In fact, the concept of the dignity of the human person appears first in Pius XI's encyclical *Divini redemptoris* (1937), in relation to the Communist threat: in it he says that communism 'divests the

²²⁰ A clear reference to the French situation. 'Laicità dello Stato', *L'Osservatore Romano*, 19th September 1946, p. 1.

²²¹ See section A3 (v) of this thesis on 'anticlericalism'; see also M. Casella, *Cattolici e Costituenti: orientamenti e iniziative del cattolicesimo organizzato (1945-1947)*, Napoli: Edizioni Scientifiche Italiane, 1987, pp. 288-291.

²²² Long, *Alle origini del pluralismo confessionale*, p. 47.

²²³ *Ibid.*, p. 212.

human person of dignity and of all self-control'.²²⁴ During the thirties, French Catholic thinkers like Congar, De Lubac and Jacques Maritain were also pushing Italian Catholics towards a re-evaluation of the rights of the individual within the Catholic religious freedom argument. Left-wing factions of the Church's Catholic Action such as the *dossettiani* were influenced by both Maritain and the plethora of papal writings, and put a great emphasis on the concept of 'the dignity of the human person' which, incorporated with Catholicism's political aims, became an area of possible convergence between different cultures and different political forces.²²⁵

A turning point in Vatican social politics was Pius XII's Christmas message of 1942 on '*L'ordine interno delle nazioni*'. In the message he rejects totalitarianism because of its disregard for the importance of the person. He also reaffirms the subjection of politics to morality and states that the aim of every society and every organisation should be '*lo sviluppo e il perfezionamento della persona umana*'.²²⁶ It is on this line that Pius XII exceeds some of the limits of previous Church social doctrine, especially in relation to the Church's traditional indifference to democracy, which dated from the time of Leo XIII and especially in his encyclicals 'Diuturnum' of 1881 and 'Humanum genus' of 1884.²²⁷ Moreover, the Christmas message, according to Igino Giordani, was an important step forward, clearly introducing the principle of the dignity of the human person as the benchmark for political and social order as a whole.²²⁸ On this basis Catholic political thought would develop throughout the following years, finally overcoming its traditional indifference towards various forms of government and attributing a 'privileged moral value' to political democracy. But in 1942 it was still a case of laying down a blueprint for future development. The Christmas message did not in fact go any further than a simple indication in favour of social structures in which a full personal responsibility was made possible and guaranteed (that is, responsibility to uphold Catholic values).²²⁹

So, the primacy of the person, the basis of political *personalismo* – a trend already apparent in minority Catholic cultural groups of the thirties – offered the

²²⁴ Carlen, *The Papal Encyclicals (1903-1939)*, p. 539.

²²⁵ Scoppola, *La repubblica dei partiti*, p. 27.

²²⁶ De Gasperi, on the other hand, considered freedom and political democracy to be the fundamental elements of society. Scoppola, *La proposta politica di De Gasperi*, Bologna: Il Mulino, 1988, p. 83.

²²⁷ Scoppola, *La repubblica dei partiti*, p. 24. For details of the main achievements and major encyclicals of recent popes see: www.testimoni2000.it/storiachiesa/papi18002000.htm.

²²⁸ See I. Giordani, *Insegnamento sociale dei Papi*, Roma: A.V.E., 1944.

²²⁹ See also Giovagnoli, *Il partito italiano*, p. 24.

possibility of putting a moral value on democracy as a form of government.²³⁰ But such an aim was not without its difficulties: the leader of the *dossettiani* and prominent member of the emerging Dc party, Giuseppe Dossetti, lamented the fact that a ‘turba di conservatori del nostro partito’ were complaining that in the draft constitution the concept of the dignity of the human person was being applied too insistently and in too abstract a manner.²³¹

For the Catholic Church, the crisis of the modern world had been brought back to its philosophical roots, with the abandoning of the two founding principles of social order: God and the human person. The reconstruction had to begin from these two poles which were brought together in the vision of Pius XII, in the idea of a natural order. And the actions of the State were subject to this natural order.²³² The last element in the doctrinal construction of Pius XII centres around the need for a juridical system within which the rights of the person are recognised and guaranteed.²³³ In this way Pius succeeds in reviving the fundamental idea of the liberal-democratic tradition of a properly established constitutional and legal order, but within the organic conception and the metaphysical vision of society, which is exactly in line with traditional Catholic social doctrine. In this vision the Church has a directive duty: to guarantee the moral picture, to encourage the education of individuals, citizens and governments to be aware of their responsibilities and to assess their historical accomplishments. The ‘civiltà cristiana’ would be established at precisely the time when these accomplishments conform to the values of which the Church is guarantor and guardian.²³⁴

(v) Anticlericalism and antichristianism

It is worth mentioning here the difference between anticlericalism and antichristianism. Antichristianism, or more correctly, antireligionism was a feature of Russian Communism feared by the Catholic Church: but Russian Communism was not the same as Italian Communism. Whereas the Catholic Church, like all other churches in Russia, had suffered at the hands of the Politburo, in Italy the situation

²³⁰ Scoppola, *La repubblica dei partiti*, p. 24.

²³¹ Dossetti, *Costituzione e Resistenza* Rome: Sapere, 1995, p. 91. For a detailed examination of the Catholic theory of the *persona umana*, see Giorgio La Pira’s speech in Segretario Generale (Ed.) *La Costituzione della Repubblica nei lavori preparati della Assemblea Costituente*, Roma, Camera dei Deputati, 1970, volume 1, pp. 314-9.

²³² Scoppola, *La repubblica dei partiti*, pp. 25-26.

²³³ Pio XI, *Discorsi: 1929-1933*, (Vol. VI), Città del Vaticano: Tipografia Poliglotta Vaticana, 1961, pp. 235-251.

²³⁴ Scoppola, *La repubblica dei partiti*, p. 26. For more on *personalismo*, see A. Acerbi, *La Chiesa nel tempo*, Milano: Vita e pensiero, 1979.

was different. Communists lived and worked alongside Catholics, many had Catholic relations or had been confirmed into the Catholic faith in their youth before turning to Communism. Thus, in Italy the relationship dynamic was different. There was, of course, a mutual suspicion and even periods of conflict and violence between Catholic Action and many left-wing political groups, but largely thanks to the calming influence of political leaders of all parties anxious not to antagonise the Church, such periods never escalated into a national problem.²³⁵ So it was primarily the Russian situation that formed the basis of the Catholic Church's concerns, with the problem for Italy being largely the same: the Church's one dimensional view of Communism as an evil which, if it took hold, would destroy the spiritual hegemony in which the Catholic Church held Italy during the post-war period, a position necessary to fulfil the Vatican's dream of a country run on Catholic principles. Thus anyone espousing antichristian propaganda was naturally considered by the Church to be either a Communist, or a *laico*, and certainly an enemy.²³⁶ And whilst the *laici* were a threat with which the Church had by now become accustomed, Communism was perceived as a more combative enemy, given the Soviet Union's declared atheism of state. Protestations by the Italian Communists that they did not embrace this ideological position, and even the declaration in the Pci statutes that religious belief was no bar to membership of the party, were simply swept aside as tactical deception.

By 1944 the threat posed by Communism had become 'an obsessive concern of the papacy',²³⁷ and papal paranoia extended into the realms of Catholic politics: left-wing Catholics keen to bridge the gap between themselves and the Communists and Socialists were strongly criticised by *Osservatore Romano* for colluding with these anti-religionist groups. But since Russia had been a major player in the allied victory in Europe the Vatican had to be careful how it voiced its anti-Communist beliefs – at least in the short term.²³⁸ However, it was not only because of Communism that the Church had to exercise caution in this interim period. In the immediate post-war period, many left-wing groups, some linked to the Action Party, the Socialists and the Communists, considered that the Church was interfering too much in political matters. An anticlerical backlash was the result and, as the term

²³⁵ ADSS, Vol. XI, Doc. 292, pp. 453-456.

²³⁶ In Italian political discourse, the term '*laico*' tends to refer to an individual or party historically opposed to the Church. In the religious context, however, it refers to the '*laity*' as distinct from the '*clergy*'.

²³⁷ Conway, *Catholic Politics in Europe*, p. 93.

²³⁸ Giovagnoli, *Il partito italiano*, p. 30.

suggests, was aimed principally at clerical interference in matters which were the concern of political, administrative and civil institutions. It did not necessarily imply hostility to religion as such when exercised within its legitimate sphere.

The Catholic Church had had to deal with anticlericalism in one form or another from the various governments since unification. The Fascist government had proven, to a certain extent, to be no different: among its upper echelons there had been factions who had displayed a latent anticlericalism, at all times suspicious of the Church.²³⁹ Despite these tensions, the Church had, on the whole, an extremely cooperative relationship with Fascism leading some to believe that once the regime had fallen there would be a wave of anticlerical reprisals. But, on a political level at least, nothing was further from the truth. Neither the Liberal leader Benedetto Croce nor the Communist leader Palmiro Togliatti proposed the suspension of the Lateran Accords, nor any measure which could be construed as hostile to the Church.

According to Jemolo, not only was there a tacit intention to postpone any discussion of the problem of Church/State relations until after all constitutional questions had been resolved, but there was also no sign of the confrontational stances evident in other problem areas of the future Constitution.²⁴⁰ Indeed, there was a sincere desire on the part of all in the left-wing parties in the period before the Constituent Assembly debates to avoid a return to the old anticlericalism. The conciliatory mood of the Left was matched by the Dc deputies: even those who later enjoyed prominent positions in government and showed the greatest inflexibility on the insertion of the Lateran Pacts into the new Constitution appeared, to those who spoke to them at that time, to be full of moderation and to display a real spirit of conciliation and goodwill.²⁴¹ However, although the left wing parties on the whole denied any wish to return to the radical secularising policies of the pre-Fascist era, Catholic suspicions of atheist and freemasonic influences on these parties remained strong and tempered the willingness of Catholic parties in France, Belgium and Italy to collaborate with parties of the centre left.²⁴²

When anticlerical feelings began to emerge in Italy in 1946, it was at a local level, as a backlash against the Church's interference in Italian politics, and was aimed principally at the clergy. The Church, however, vociferously denied that it had

²³⁹ Jemolo, *Chiesa e Stato in Italia*, pp. 188-189.

²⁴⁰ Ibid., p. 283.

²⁴¹ Ibid., pp. 284-285.

²⁴² Conway, *Catholic Politics in Europe*, pp. 93-94.

any reason or ambition to meddle in Italian politics. In an article written for the Vatican's official newspaper, *L'Osservatore Romano*, it stated:

Nonostante tutte queste precisazioni si continua ad agitare di fronte alle masse il vecchio spettro di clericalismo. Se il clericalismo è la ingerenza del clero nel dominio politico dello Stato, o quella tendenza che potrebbe avere una società spirituale a servirsi dei poteri pubblici per soddisfare la sua volontà di dominazione, noi dichiariamo altamente che condanniamo il clericalismo come contrario alla autentica dottrina della Chiesa.²⁴³

However, this statement from the official Vatican newspaper, although claiming to be the official Vatican line on political interference by its clergy, was belied in practice, as one event in particular clearly shows. At the time when the Commission of 75 was concluding its preliminary draft of the new Constitution prior to discussion in the full Constituent Assembly, there was in Italy, according to Falconi, a 'scatenamento di violenza contro il clero e la religione' which, after the cross-party truce of 1945, characterised the second half of 1946 and reached a truly alarming climax during the *settimane a cavaliere* of December 1946 and January 1947.²⁴⁴ The main reason for this unrest was the huge campaign of the education of the masses embarked on by the clergy at the time. As Casella explains:

Non c'è dubbio: nell'età della Costituente, clerici e laici organizzati svolsero, sotto la guida della gerarchia, una massiccia e capillare azione politica; un'azione certamente meno organizzata e coordinata di quella che sarebbe stata poi svolta alla vigilia del 18 aprile 1948, ma non per questo meno estesa, intensa ed incisiva.²⁴⁵

The situation was exacerbated with the announcement of the *legge elettorale* (and in particular article 66 of the law banning ecclesiastics from taking part in political propaganda) prior to the institutional elections of 2nd June 1946. During the months leading up to the elections the various Catholic Action groups held rallies, congresses and '*settimane sociali*', one the most significant of these being the first postwar Congress of the 'Movimenti Laureati' in Rome from 3rd to 8th January 1946 where speeches were made by, among others, De Gasperi, Fanfani and Moro. An arguably more significant *settimana sociale* was held in Naples from 24th February to 3rd March on 'aspetti concreti dei vari problemi sociali in sede di Costituente'. The week was presided over by Cardinal Alessio Ascalesi and Monsignor Lanza with the most

²⁴³ 'Laicità dello Stato', in *L'Osservatore Romano*, 19th September 1946, p.1.

²⁴⁴ C. Falconi, *Gedda e l'Azione cattolica*, Firenze: Parenti, 1958, p. 119.

²⁴⁵ Casella, *Cattolici e costituente*, p. 13.

significant outcome being a unanimous motion of absolute condemnation of article 66 of the forthcoming electoral law, which was conveyed to De Gasperi and the president of the *Consulta*.²⁴⁶

This bitter condemnation of the electoral law put De Gasperi in a very uncomfortable position: as president of the interim government he was responsible for the law which was intended to attack anticlericalism at its source – Catholic clerical interference in political affairs. But he was also Secretary of the Dc party, whose main source of financial and organisational support was the Vatican. Consequently, under pressure from the left-wing parties in the government, he had to be seen to be acting positively to discourage the clergy from interfering in political affairs, while at all costs avoiding any act that could be construed as antagonistic to the Vatican. De Gasperi's attempts to quell the threat of anticlericalism were dealt another blow with pressure from the right-wing *Uomo qualunque* party: the aggressive anti-left/anti-Dc/pro-Catholic electioneering of the *Uq* party prior to the administrative elections at the end of 1946 appealed greatly to the southern electorate, led to landslide victories for the party in the south and, more significantly, attracted the support of the Vatican, thus threatening De Gasperi's and the Dc's position as its preferred choice.²⁴⁷ The leader of the Dc also had to intervene during the debates in the Constituent Assembly to avoid the diffusion of anticlerical feelings which could potentially have led to a denunciation of the 1929 Pacts, a renewed position of isolation for the Church and the Dc left high and dry with no chance of any future electoral success, at least in the short term.²⁴⁸

²⁴⁶ Ibid., pp. 271-273. The motion read: "Considerato che, quando la politica tocca l'altare, la Chiesa ed i suoi sacerdoti hanno, per mandato Divino loro conferito, il diritto e il dovere di interloquire: Considerato che è di esclusiva competenza della Chiesa, nei confronti dei suoi sacerdoti, definire l'ambito del loro magistero e regolarne l'esercizio, e che l'art. 1 del Concordato vigente fra Stato e Chiesa assicura alla stessa il libero esercizio del potere spirituale e della sua giurisdizione in materia ecclesiastica, ed accorda agli ecclesiastici, per gli atti del loro ministero spirituale, la difesa dell'autorità civile; Considerato che, come ammonì S.S. Pio XII nel Radiomessaggio Natalizio 1944, è stretta esigenza di una sana democrazia 'mettere il cittadino sempre più in condizione di avere la propria opinione personale e di esprimerla e farla valere in una maniera confacente al bene comune', onde non può ritenersi lesiva di libertà o di spirito democratico l'opera del sacerdote diretta ad illuminare le menti dei cittadini sui loro doveri . . . Afferma che l'articolo 66 del progetto di legge elettorale, risuscitando vieti anticlericali cari agli aberranti concezioni laicistiche e totalitaristiche dello Stato, oltre a rivelarsi ingiusto e ingrato contro il clero italiano, è, per le ragioni suesposte, incoerente, antilibertario, antidemocratico e anticoncordatario . . ." Source: *Archivio Azione Cattolica Italiana, Rome, (Fondo 'PG')* cited in Casella, *Cattolici e costituente*, p. 273.

²⁴⁷ See section A3 (vi) of this thesis and also Scoppola, *La repubblica dei partiti*, p. 143.

²⁴⁸ Giovagnoli, *Il partito italiano*, p. 29.

(vi) Montini, the *dossettiani* and De Gasperi

The young Giovanni Battista Montini was firmly convinced that the Catholic laity should ‘uscire dalle sacrestie’ in which the Fascists had confined them, in order to reorganise themselves into an active political militancy.²⁴⁹ He felt it was time for Catholics to revive the political calling that had been interrupted by the liquidation of the Ppi. But it had to happen, on the one hand, with a much stricter collaboration between ecclesiastical institutions and Catholic militant groups; and on the other hand, the resurgence of political activity had to cultivate policies less ‘insular’ and more ‘national’. In fact, Montini had contributed greatly to the dissemination of Jacques Maritain’s ideas throughout Italy, preparing the ground in the Catholic Action intellectual groups for De Gasperi’s democratic proposals.²⁵⁰ Montini thought in terms of a Catholic ruling class which was close to the ecclesiastical hierarchy, but simultaneously able to pursue ‘national’ interests, carrying out in the country an effective unitary function which had been lacking in Italian history.²⁵¹ This aim of Montini mirrored the dreams of Pius XI and Pius XII. But up to 1944 this vision was only one of a number of political blueprints for the country: Tardini, for example, was in favour of a dissemination of the Catholic electorate among the various political parties, an idea favoured by De Gasperi throughout the Fascist years.²⁵²

Montini’s role was enhanced just after the war: Catholic Action was brought back under papal control, having been delegated to the Italian bishops in 1940 to spare the Vatican from being directly involved in its clandestine anti-Fascist activities. The Pope also reclaimed responsibility for the appointment of its leaders: the appointment of Vittorio Veronese as its first post-war leader was a huge boost to the influence of Montini, as they had been close friends in FUCI, the Catholic Students Organisation.²⁵³

Scoppola, like many other commentators, believes that Montini was the single most constant and effective link between De Gasperi and the Vatican; a close

²⁴⁹ For information on Montini’s background see Scoppola, *La proposta politica di De Gasperi*, Bologna: Il Mulino, 1988, p. 121 and Hebblethwaite, *Paul VI: The first modern Pope*.

²⁵⁰ Scoppola, *La proposta politica di De Gasperi*, p. 121. Montini’s work during the thirties begins to emerge from a study of the events of 1931 (*the rupture between Mussolini and the Vatican*) and of the Catholic Action intellectual groups (see the essay by M. C. Giuntella, *I fatti del 1931 e la formazione della ‘seconda generazione*, in P. Scoppola, and F. Traniello, (Eds.) *I cattolici fra fascismo e democrazia*, Bologna: Il Mulino, 1975, pp. 185-223 and R. Moro, *La formazione della classe dirigente cattolica, 1929-1937*, Bologna, Il Mulino, 1979.

²⁵¹ Giovagnoli, *Il partito italiano*, p. 39.

²⁵² G. Tassani, *Identità e appartenenza: I cattolici italiani e la sinistra che cambia* Roma: Edizioni Lavoro, 1991, p. 18.

²⁵³ Hebblethwaite, *Paul VI: the first modern Pope*, p. 206.

personal friend of De Gasperi, he was almost the natural ally in the effort to have De Gasperi's policies accepted by the Pope; policies which substantially reflected Montini's own long-held convictions.²⁵⁴ But Montini's task was much more complex than simply trying to persuade the Pope of the benefits of supporting De Gasperi's party. Montini was responsible for masterminding the huge operation to manoeuvre the majority of the Catholic population behind the Dc party; but also within his remit was responsibility for imposing the Vatican's directives on the Dc leadership. It was in this more sinister role that on 12th December 1946, amid the anticlerical backlash of that year, Montini held a dramatic meeting with De Gasperi: the assistant to the Vatican Secretariat gave notice in no uncertain terms that the collaboration with the anticlerical parties, not only in Rome but also in the government, was 'no longer allowed'.²⁵⁵ He gave a blunt warning: if the Dc party continued with such collaboration, it would be considered to be hostile to the Vatican. The alternative was also made clear: there would be 207 Catholic deputies – if they joined forces with the Uq party.²⁵⁶ De Gasperi was thus, against his better judgement, forced by the Vatican to collaborate with parties to the right of the Dc. Such actions by Montini could be taken as either an indication of his true political views, or alternatively as an indication of the pressure he was under and the delicate position he was in: obviously his main allegiance was to the Pope; but if one adds into the equation his close personal friendship with De Gasperi, his adherence to the left-wing socio-political views of Jacques Maritain and his links by age and ideology to the *dossettiani*, one begins to appreciate the complexity of the web he was weaving and the delicacy of his position.

Montini's status in the Vatican was undoubtedly aided by his close links with the new generation of politicians: as Hebblethwaite explains, "he had a network of friends who would actually set up and control the political arrangements of democratic Italy."²⁵⁷ Hebblethwaite names a number of these friends and accomplices of Montini in and around Vatican circles, among whom were Mario Cordovani, the official papal theologian, and probably his most important ally, the Oratorian Paolo Caresana, Montini's spiritual director. Caresana was also the

²⁵⁴ Scoppola, *Proposta politica di De Gasperi*, p. 121.

²⁵⁵ Montini was even responsible for discouraging and even obstructing the political action and initiatives of the left-wing groups like the Catholic Communist Party. See Giovagnoli, *Il partito italiano*, p. 31 and N. Antonetti, *L'ideologia della sinistra cristiana: I cattolici tra Chiesa e comunismo (1937–1945)*, Milano: Franco Angeli Editore, 1976 for more.

²⁵⁶ Scoppola, *La repubblica dei partiti*, pp. 143–144.

²⁵⁷ Hebblethwaite, *Paul VI: the first modern Pope*, p. 191.

spiritual guide to the *dossettiani* who “acted as a left-wing ginger-group within the Christian Democrat Party” and, like the Communists, viewed the resistance movement as a second *Risorgimento*.²⁵⁸

However the *dossettiani*, despite having their roots firmly embedded in Catholic Action, were not afraid to call for fundamental changes to the Church’s approach to its new political responsibilities. Dossetti’s own assessment of the ‘*realità italiana*’ was uncompromising:

Il primo principio e fondamentale è che il problema italiano è soprattutto problema del cattolicesimo italiano, dell’*Ecclesia* italiana. È inutile, assurdo e colpevole pensare che il problema italiano sia innanzitutto problema del governo, dello schieramento politico, dell’organizzazione e della riforma sociale, della forza comunista in Italia. Il problema italiano è essenzialmente qui: *la Ecclesia italiana ha in gran parte mancato il suo compito negli ultimi decenni*.²⁵⁹

The relationship between Dossetti and De Gasperi is an interesting one. The cultural worlds of De Gasperi on the one hand and of Dossetti and his companions on the other were very different: there was a generation gap which made any dialogue very difficult, even with Montini as mediator.²⁶⁰ It is plain to see from their correspondence that despite there being mutual respect, acclaim and affection at times, their relationship was dominated by friction, the root of which was De Gasperi’s decision (which, in one letter, Dossetti claims he took without consultation with his party) to hold the institutional referendum before the Constituent Assembly was inaugurated.²⁶¹ De Gasperi’s tendency to make unilateral decisions comes in for more criticism in the same letter:

. . . nessuna delle cose importanti da me proposte o richieste per dare compattezza e razionalità di struttura e di azione al corpo del Partito, ha trovato attuazione; ho dovuto constatare che io, come del resto altri membri formalmente più qualificati della Direzione, siamo stati costantemente, estromessi da tutte le decisioni di maggior rilievo, da ogni possibilità di influsso sulla politica del Partito . . .²⁶²

²⁵⁸ Ibid., p. 208.

²⁵⁹ Dossetti, *Costituzione e Resistenza*, p. 94-5.

²⁶⁰ Scoppola, *La repubblica dei partiti*, p. 109.

²⁶¹ M.R. De Gasperi, (Ed.) *De Gasperi scrive. Corrispondenza con capi di stato, cardinali, uomini politici, giornalisti, diplomatici*, Brescia: Morcelliana, 1974, Vol. I, pp.287ff. See also section A3 (vii) b) of this thesis for more evidence of De Gasperi acting alone, this time in the preparation of the initial Dc manifestos.

²⁶² De Gasperi, (Ed.) *De Gasperi scrive*, Vol. I, pp. 278ff.

If Dossetti was sometimes irritated by De Gasperi, then the reverse is also true: as regards the aims of Catholic political integralists, such as perhaps the *dossettiani* and especially the Vatican itself, De Gasperi said in a letter to Sergio Paronetto on the 10th December 1943, that politically speaking, we need space ‘per difendere la *relativa* bontà della democrazia e far tacere i cercatori del bene assoluto’.²⁶³

After their success in the 1946 institutional and Constituent Assembly elections, the *dossettiani* began to plan Italy’s future. They set down their programme in a document called ‘Questa che domandiamo’.²⁶⁴ A gap had developed in Italy between non-practising and committed Catholics; a gap which had to be closed by remedying the ‘defective education’ of the clergy and transforming Catholic Action. With the revival of a Catholic political party, clericalism became a real threat: the Dc risked appearing subordinate to the Church, while the clergy were acting as party recruiting agents.

The *dossettiani* attempted to avoid this situation by emphasising the autonomy of politics: in other words, its freedom from clerical interference. With Montini’s support and guidance, the *dossettiani* were seeking to create a new society partly based on the teaching of Maritain and especially his work *Humanisme Intégrale*. Maritain’s ‘new Christendom’, like that of Pius XII, was seen as a political ‘third way’, but Maritain’s was to be found somewhere between Soviet Communism and American Liberalism. To some high ranking officials in the Vatican, like Alfredo Ottaviani, Maritain’s writings were considered to be dangerously liberal. But with Maritain now in Rome as French Ambassador to the Holy See and closer to Montini than ever before, he was able to help the *dossettiani* at close hand.²⁶⁵

The *dossettiani*’s influence on the final manifesto of the Dc party is clear: by 1946 the latter saw itself as the party ‘committed to practical justice and social reform’. As Hebblethwaite points out they would inevitably fall short of this ideal; and inevitably there would be opposition. The Vatican was not alone in wanting the Dc to be ‘merely the Italian Conservative Party at prayer’.²⁶⁶

²⁶³ Cited in Scoppola, *La proposta politica di De Gasperi*, p. 71.

²⁶⁴ Given in full in Zizola, G., *Il Microfono di Dio, Pio XII, Padre Lombardi e i cattolici italiani*, Mondadori: 1990, pp. 77-81.

²⁶⁵ See Hebblethwaite, *Paul VI: the first modern Pope*, p. 208.

²⁶⁶ *Ibid.*, p. 209.

(vii) An uncomfortable coalition: the Vatican and the Dc in the new Italy

a) The vision of the ecclesiastical hierarchy

During the 1930's, Catholicism had developed its own unique political ideology and proceeded to promote it as a practical and morally sound alternative solution to the innumerable problems faced by inter-war Europe.²⁶⁷ The vast array of papal encyclicals espousing its political theories were not only a major source of Catholic integralist ambition, but they also enabled the Catholic leaders of the 1930's to 'insist that they were heirs to a distinctive Catholic political tradition'.²⁶⁸ Rejecting the evils of Liberal individualism and Marxist or Fascist totalitarianism, they claimed that such a tradition offered a 'third way' for European politics.

Having 'denounced' Nazism and Fascism in previous encyclicals, it was in his encyclical *Divini redemptoris promissio* (1937) that Pius XI first suggested an alternative political programme based on the teachings of the Church. It offered a 'Programme for the solution of the Social Question and the defeat of Communism'. It then called for, among other things, a renewal of Christian life, detachment from earthly goods, the spread of Christian charity, social justice and even had a section on 'distrust of Communist tactics'.²⁶⁹ Much more cautious was the first encyclical of Pius XII, *Summi Pontificatus* (1939), which explained how the Church had not the slightest intention of replacing state authority, but wanted rather to support it. The emphasis in *Summi Pontificatus* returned instead to the theme of the freedom of the Church, claiming for itself 'piena libertà di compiere la sua opera educatrice, annunciando alle menti le verità, inculcando la giustizia, e riscaldando i cuori con la divina carità di Cristo'.²⁷⁰ In fact, according to Scoppola, the point reached by Pius XII's magisterium was the most coherent and most advanced possible within the philosophical categories and cultural premises of the traditional social doctrine of the Catholic Church. However, precisely because it came within those parameters, it remained within the anti-modernist culture, firmly holding on to the negative view of the processes of secularisation.²⁷¹

The fluctuating political landscape of Europe and in particular the occupation of Austria by nazi Germany in 1938 had put an end to the popular Catholic dream of

²⁶⁷ Conway, *Catholic Politics in Europe*, p. 4.

²⁶⁸ Ibid., p. 62.

²⁶⁹ Carlen, *The Papal Encyclicals (1903-1939)*, pp. 548-549.

²⁷⁰ Carlen, *The Papal Encyclicals (1939-1958)*, p. 12.

²⁷¹ Scoppola, *La repubblica dei partiti*, p.26.

a united front of Catholic nations as a bulwark against both Communist atheism and Nazi paganism. It had also brought to an end any Vatican sympathies for Mussolini's fascist government. However, the Holy See's dream of a country run on Catholic principles was far from over. As Scoppola puts it: 'al momento della caduta del fascismo l'ipotesi, non realizzata negli anni trenta, riemergeva spontaneamente'.²⁷² When the prospect of the defeat of the axis powers and the end of the Fascist regime became apparent, pontifical messages began to be interpreted as a Catholic 'call-to-arms' with a view to a new 'social crusade'. Giovagnoli claims that the Holy See avoided intervening directly in the Italian political situation, in spite of American encouragement to do so.²⁷³ This does not imply, of course, that influence was not exercised in less direct ways.

At the end of the war, the Catholic Church emerged as a potent force ready to act and as an effective focus for mediation. According to Scoppola, this and nothing else explains American interest in the opinion of the Vatican on the future of post-Fascist Italy.²⁷⁴ However, a close relationship was developing between President Roosevelt and Pope Pius XII which further contributed to the possibility of the Vatican acting as a trusted advisor in the decisions about the future of Italy.²⁷⁵ In fact, as early as 1942 the Vatican began presenting De Gasperi to the Americans as a postwar leader and in February 1943 American and Vatican representatives began tackling the problem of the future Italian government in earnest.²⁷⁶ Scoppola gives the sequence of events:²⁷⁷ Myron Taylor (US representative to the Vatican) had approached the apostolic delegate to Washington, Amleto Cicognani,²⁷⁸ to elicit "l'opinione prevalente circa la forma di governo da dare alla medesima nazione" in the event of the fall of Fascism, at that time considered inevitable and imminent.²⁷⁹ The request, sent to the Vatican Secretariat of State, appeared delicate and embarrassing: whatever reply was forthcoming would have been tantamount to blatant Vatican intervention in internal Italian politics; not responding would be to lose a potentially unique opportunity. The reply was entrusted to Monsignor Domenico Tardini who prepared the following four point proposal: the Holy See's

²⁷² Scoppola, *La proposta politica di De Gasperi*, p. 53.

²⁷³ Giovagnoli, *Il partito italiano*, p. 30.

²⁷⁴ Scoppola, *La proposta politica di De Gasperi*, p. 46.

²⁷⁵ Giovagnoli, *Il partito italiano*, p. 29; Buchanan and Conway, *Political Catholicism in Europe*, p. 87.

²⁷⁶ McCarthy, *The Crisis of the Italian State*, p. 23.

²⁷⁷ Scoppola, *La proposta politica di De Gasperi*, p. 48.

²⁷⁸ Cicognani also discusses the possibility of De Gasperi becoming Prime Minister in February 1944 in Washington. ADSS, Vol. XI, Doc. 51, pp. 154-155.

²⁷⁹ Scoppola, *La proposta politica di De Gasperi*, p. 48.

detachment from any question relating to internal Italian politics; the Italian people's allegiance to the monarchy;²⁸⁰ the constitutional duty of the king to appoint the head of government;²⁸¹ finally, the impossibility of indicating names of individuals (i.e. favoured by the Vatican).²⁸²

After his foray into the world of politics in 1943, Monsignor Tardini continued to be influential: in December 1945 he complained that the Dc party had drifted too far to the left, while in the same month he urged them to help make De Gasperi a successful Prime Minister. But what kind of democracy and what kind of state did the Vatican want for Italy? To find the answer, one must consider the Pope's priorities and the Church's view of the state.

As to the Pope's priorities, they were wholly bound by what was best for the Church. The Lateran Treaty, Concordat and Financial Convention were a lesson in opportunism and unique in assuring for the Church political, spiritual and financial stability in spite of the massive political and financial consequences for the Italian State. However, such considerations were irrelevant to the Vatican. As a result of the indignities it had suffered at the time of unification, it had viewed the Italian State – and indeed any democracy – with deep suspicion. According to Poggi,

the self-image of the Church has historically inspired it to make two major claims: (1) that its peculiar powers, grounded on its participation in the nature of the Godhead, are its title to a unique, exclusive position in the world; (2) it is the keeper of a total message, which ought to be taken as the principle of a regeneration of worldly reality in all its aspects.²⁸³

²⁸⁰ After the institutional referendum this point became irrelevant.

²⁸¹ This duty was included in the Albertine Statue, and also became irrelevant after the institutional referendum.

²⁸² This point had already been made irrelevant by Vatican support for De Gasperi, which had been obvious to the Americans since the previous year; subsequently other names would also be suggested by the Vatican. Before this four point proposal was passed to the Pope for ratification, Cardinal Maglione made several corrections to the first three points and removed the fourth. On 19th May 1943, the Pope remarked to Tardini that it would be more worthwhile 'to put everything into the hands of the informants and public opinion' and that the question of supplying names could not be ignored, in as much as it showed deference towards the Holy See. Monsignor Tardini then reworked the text, replacing the fourth point and adding the names of Orlando, Marshall Castiglia and Federzoni, all considered by the Vatican to be capable of leading at least an interim government. Tardini, however, felt it necessary to add a proviso to the fourth point: not supplying names would require an explanation on behalf of the Holy See; but it appeared to Tardini that to supply names would constitute a major indiscretion, risking a backlash from Fascists, Germans, or indeed anyone aspiring to succeed the Regime. He was also concerned as to how the Holy See could guarantee the integrity of the intentions and the ability of those named. On 21st May, 1943, Maglione passed Tardini's observations to the Pope, who considered the advice and subsequently suppressed item four. (My translation of) ADSS, vol VII, p.34-5.

²⁸³ Poggi, *Catholic Action in Italy*, p. 46.

If one contrasts the above position with the generally pluralistic and increasingly secular nature of Western culture during the 20th century one can appreciate the dilemma with which the Church was faced: to give way to some extent and accept a new, less powerful position in the world, or continue promoting its unique identity and push itself increasingly towards a position of hegemony. The former was later favoured by John XXIII with the Second Vatican Council being convened by him for that purpose, whereas the latter had been pursued by most of the other modern popes and particularly Pius XI and Pius XII.

Indeed, it was during the pontificates of Pius XI and Pius XII that the Vatican finally became a massive (some might say cumbersome) and powerful institution. As such it displayed its determination to retain the power it had gained in 1929 and to have the Lateran Pacts (which gave the Church much power over education and marriage as well as much freedom from paying taxes), written into what, after June 1946, it recognised would be a Republican constitution. But in the 1940's Communist and Catholic defects complemented one another: both entities created mass parties that were supposed to instil democratic values and yet the Church and the Pci had what could be termed 'Leninist' cultures. Although poles apart in their jealously guarded ideals, each saw itself as the model the state was supposed to represent. Whether intentionally or not, the consequences of their actions during the post war period left the Italian state structurally and administratively weak.²⁸⁴

However, I believe the Vatican was more culpable in the creation of a weak state than some commentators admit: given their predisposition to plan and lay foundations for future events, it is possible that they were aware of the damage they were causing to the Italian state, but subordinated this to regaining political influence not enjoyed for centuries. Moreover, McCarthy, for example, is unconvinced by the notion of Catholic hegemony. He argues that if the term is used to indicate not merely possession of power but the use of that power to guide the whole of society toward defined goals, then the Catholics were not hegemonic.²⁸⁵ In my opinion this is a weak argument because possession and use of political power was precisely what Pius XI and XII had been advocating – or at least they were the means necessary to achieve their aims. How else can one describe integralism if not as hegemonic? How else can one describe the many papal encyclicals (from both Pius XI and Pius XII) dealing with Catholic political ambitions whose stated aim was precisely 'to guide

²⁸⁴ McCarthy, *The Crisis of the Italian State*, p. 40.

²⁸⁵ Ibid.

the whole of society toward defined goals' (in other words a society run along Catholic principles and ideals)? Finally, given this aim, how else can one describe the Catholic domination of Italian political and social life and the oppression of the Protestants and the Left during the decades following the creation of what was supposed to be a new 'democratic' Republic?

Furlong confirms this opinion to some extent when he claims that since the end of Fascism, the Vatican had been showing a distinct willingness to consider a future Italian State governed by a more authoritarian version of a liberal democracy.²⁸⁶ Even Pius XII, a belated convert to the idea of 'democracy', confirmed this opinion: unlike the *dossettiani*, he did not hold the view that the resistance movement could be seen as a new *Risorgimento*: he was in favour of democracy in Italy – provided it was led by Catholics.²⁸⁷

Thus, the Vatican's vision was clear-sighted and doubtless it considered that it was creating a strong Italy, endowed with religious and moral authority and capable of resisting international Communism. In fact though, it was contributing to the creation of a state that, while different from earlier versions, did not resolve their shortcomings.²⁸⁸ To explain why this was so, we must consider the Church's view of the Italian political situation. The Dc, the dominant party of government in the new Republic, was initially at least, dependent on the Church's organisation to get itself elected. Moreover, from a Catholic perspective, political legitimacy was subordinate to religious legitimacy, which resided in the Vatican.²⁸⁹

Guido Gonella, who was minister for education in 1946 calls for freedom of religion for the individual and then moves without transition to state that Catholicism must be the state religion: 'the fundamental institutions of the state must be based on Christian ethics. Either the schools teach religion or else they will be areligious, which for practical purposes means anti-Christian'. Giorgio La Pira, Dossetti's friend and ally, denied there could be a lay state: 'man had a religious nature and social institutions must reflect it'.²⁹⁰

The Dc's close links with the Vatican were the prime cause of the new state's weakness. Instead of acquiring legitimacy through representation and efficiency, it received legitimacy from the papacy. McCarthy stops short of condemning the

²⁸⁶ P. Furlong, *Modern Italy: Representation and Reform*, London: Routledge, 1993, p. 55.

²⁸⁷ Hebblethwaite, *Paul VI: the first modern Pope*, p. 208.

²⁸⁸ McCarthy, *The Crisis of the Italian State*, p. 24.

²⁸⁹ Ibid.

²⁹⁰ Cited in *ibid.*, p. 25.

Vatican for putting its stranglehold on Italian politics, claiming that no other force could have filled the 1943 vacuum. But in the 1946 elections the Dc neither had control over the ecclesiastical hierarchy nor over its electorate and so it had to rely on the Vatican to deliver the vote with its doctrine of Catholic unity.

Following the turbulent relations between the Vatican and the Ppi, Pius XII was not convinced of the need for a Catholic party. According to Buchanan and Conway, it was only the insistent lobbying of Montini and the Dc's 1946 electoral success that persuaded the Pontiff to ditch earlier plans to resuscitate a clerico-moderate alliance between the Catholics and a leading liberal politician such as Orlando. They claim that it was not until 1947 that the Vatican dropped its reservations – presumably following the Communists departure from government.²⁹¹ However according to Scoppola:

L'evoluzione dell'atteggiamento della Chiesa in favore della Democrazia cristiana si colloca . . . nel periodo fra la fine del 1944 e la conclusione della guerra di liberazione con le sue immediate conseguenze, nel periodo finale cioè della Resistenza.²⁹²

I would concur with Scoppola's date here, but my own feeling is that the party received the invaluable backing of the Vatican only once its manifesto complied with the Vatican's vision for the new Italy, as defined in the Dc documents that emerged from 1944 onwards. In the constant manoeuvring undertaken by the Vatican at this time one can not ignore the fact that the Vatican was pro-actively involved in its alliance with the Dc via Montini and the Catholic Action groups. Moreover, the Dc's electorate consisted principally of Catholic voters and its policies were necessarily constrained by the influence of the Bishops and the Vatican. Pius XII, meanwhile was displaying a keen interest in the development of Italian domestic politics, particularly from 1943.²⁹³

b) *The vision of the political hierarchy*

In a charmingly optimistic, though hopelessly naïve view of a future democratic Italy, Don Luigi Sturzo, exiled leader of the *Partito popolare* considered that “Christian Democracy, with its ethical concept of political life, its spirit of initiative and moderation, and its character of a centre party, will contribute much to Italy's

²⁹¹ Ibid., p. 87.

²⁹² Scoppola, *La proposta politica di De Gasperi*, p. 138.

²⁹³ Furlong, *Modern Italy*, p. 58.

well-being.”²⁹⁴ In order to better assess the vision of the political hierarchy in shaping Italy’s future, one must examine the contribution made by Alcide De Gasperi. He had made a name for himself as the last political secretary of the Ppi from May 1924 to December 1925 prior to being arrested by the Fascists, imprisoned and then released following an intervention by the Vatican. He was then given a post in the Vatican library where he worked until 1945. In a critique of Benedetto Croce’s *Storia dell’Europa nel secolo decimonono*, published in 1932, he denounced Croce’s anticlericalism, underlining instead the contribution made by ecclesiastical institutions in the course of history towards the development of freedom.²⁹⁵ This stance helped De Gasperi establish for himself a position much more in tune with the new era of Catholicism than the other *ex-popolari* in exile, and allowed him the opportunity to plan for the political future of Italy, working on the formation of the new Dc party from 1942.

According to Buchanan and Conway, his first ‘stroke of luck’ was to be chosen as a compromise candidate for the premiership when Ferruccio Parri’s administration was brought down by the conservatives in December 1945. As the first ‘Catholic’ prime minister and also as minister of the interior, the key ministry controlling the prefects or provincial governors and the police, De Gasperi was able to exploit the enormous political and ultimately electoral advantage which these two great offices gave an Italian politician.²⁹⁶

Unlike Pius XII’s overweening desire to see the creation of a *civiltà cristiana*, and his belief that the basis of every society and every organisation should be ‘lo sviluppo e il perfezionamento della persona umana’, De Gasperi’s more modest proposal was that freedom and political democracy should be the foundation stone’s of the new Italy.²⁹⁷ In fact, De Gasperi was quite attracted by the principle of religious tolerance and by the idea of a pluriconfessional state. Indeed, he even feared the consequences of Catholic intolerance of other Christian confessions.²⁹⁸ He could have pursued the issue by calling for a review of the Lateran Concordat,²⁹⁹ or changes to the current laws dealing with the permitted religions, but these were

²⁹⁴ L. Sturzo, *The Catholic Church and Christian Democracy* in L. Pope and K. Underwood (Eds.), *Social Action*, vol. X, no. 5, New York: The Council for Social Action of the Congregational Christian Churches, May 15 1944, p. 41.

²⁹⁵ Cited in Giovagnoli, *Il partito italiano*, p. 36.

²⁹⁶ Buchanan & Conway, *Political Catholicism in Europe*, p. 86. As already mentioned, it is widely accepted that it was not so much the political presence of De Gasperi that conquered the electorate, but rather the influence of the Church.

²⁹⁷ Scoppola, *La proposta politica di De Gasperi*, p. 83.

²⁹⁸ Giovagnoli, *Il partito italiano*, p. 37.

²⁹⁹ In fact, De Gasperi did exactly this in the first Dc manifesto.

sensitive issues for the Vatican, on whose support he was relying heavily. Such antagonistic proposals might have been totally counter-productive and might have undermined his and the party's political future. However, De Gasperi's earlier vision of Catholics forming a number of different political parties, argues Scoppola, substantially followed Maritain's philosophy, but did not imply in itself Catholic political unity. Moreover, it denied that unity of faith was a sound enough basis on which to construct any form of political unity and rejected any mandate obtained only from Catholics. Nevertheless, he was very aware, once he had formed a single party of Catholics, that the Vatican was non-committal and, in some quarters, hostile towards the Dc. The Church's official line was indicated by Montini in a letter to Padre Gemelli in May 1947:

la eventuale formazione di una durevole e organizzata azione politica è cosa che riguarda i fedeli in quanto cittadini, salvo il diritto della Chiesa d'intervenire, per l'osservanza e la tutela dei principi cattolici.³⁰⁰

However, there were also factions within the Vatican which rejected Catholic political unity, preferring not to rule out alternative forces to the right of the Dc party. Encompassing both of these options – represented by Montini on the one hand and by Tardini and Ottaviani on the other – was the Pope's own preference for Catholic unity under the guidance of the ecclesiastical hierarchy.³⁰¹

In 1944, as the Dc documents cited below indicate, De Gasperi acquiesced to the pontiff's vision of Vatican-led Catholic unity, shelving his ideal of Catholic political pluralism. However, in the 1946 referendum De Gasperi resisted papal pressure to call on Dc supporters to vote for the retention of the monarchy and by that same year, De Gasperi felt it was time to try to reduce his party's ideological reliance on papal orthodoxy.³⁰² But De Gasperi's apparent desire for independence from the Vatican should not be exaggerated. One of the lessons he had learned from his Ppi years was that the tie with the Vatican was essential: without it the Ppi had been easy prey for Mussolini; moreover, he did not have the power to move far from Pius XII who could exert great influence over the Dc electorate. Despite its reliance on the Church, and the consequent charges of "aretratezze e contraddizioni" with which the Catholic Church was associated, the Dc party was still an attractive

³⁰⁰ Cited in Scoppola, *La proposta politica di De Gasperi*, p. 128.

³⁰¹ Ibid.

³⁰² Ibid., p. 33 and Furlong, *Modern Italy*, pp. 68-69.

proposition for the Italian Catholic electorate.³⁰³ In fact, across most of the country, it was the only viable option, as pointed out by the Catholic clergy and hierarchy *ad nauseam* to the people of Italy.

Although discordant with his own idea of a political democracy, De Gasperi realised the importance of maintaining good relations with the Pontiff, and throughout much of the period of the Constituent Assembly he even showed a willingness to listen with deference to Papal suggestions. The following is an extract from an undated letter sent by De Gasperi to the Pope during this period: ‘. . . sempre disposto a prestare l’orecchio ai preziosi suggerimenti che mi venissero dati e pronto ad assumere innanzi a Dio e alla storia la responsabilità che m’incombe . . .’³⁰⁴ This shows that De Gasperi understood his duty and position: subservient to God and, curiously, to history (with no mention of the State nor the electorate).

As mentioned above, De Gasperi’s own political views are evident in the early documents of the Dc. The *Idee ricostruttive della Democrazia Cristiana* signed by De Gasperi under the pseudonym ‘Demofilo’, states that it is of particular interest to the democracy (i.e. of the new Italy)

che la missione spirituale della Chiesa Cattolica si svolga in piena libertà, e che la voce del Romano Pontefice, levatasi così spesso in difesa della dignità umana, possa risuonare liberamente in Italia e nel mondo. Contro ogni intolleranza di razza e di religione, il regime democratico serberà il più riguardoso rispetto per la libertà delle coscienze. È in nome di essa . . . che lo Stato riconosce efficacia giuridica al matrimonio religioso e assicura la libertà della scuola che può essere mortificante strumento di partito.³⁰⁵

This document, simply dated July 1943, shows a deep consideration for the freedom of the Pope but also clearly indicates empathy for a pluralistic approach to religious freedom and even education – both points being contrary to the terms of the Concordat. This appears to be a further indication of De Gasperi, if not working alone, then imposing his own ideas on the document, since it closely reflected his own views on democracy, education and Church/State relations.

The Dc’s *Programma di Milano* was promulgated on the 25th July 1943 under the heading ‘Per un’Italia democratica e cristiana’. In this document, unlike its more generic earlier cousin, De Gasperi’s own views are squeezed out as a result of a collaboration with *ex-guelfisti* like Piero Malvestiti, Edoardo Clerici and Enrico

³⁰³ Scoppola, *La repubblica dei partiti*, p. 104.

³⁰⁴ De Gasperi, *De Gasperi Scrive*, Vol II, p. 107.

³⁰⁵ A. Damilano, (Ed.) *Atti e Documenti della Democrazia Cristiana (1943 – 1967)*, Roma: Edizioni Cinque Lune, 1968, p. 9..

Falck. They tended towards Pius XII's more consciously Catholic 'third way' between capitalism and communism (though without any corporatist overtones). After further collaboration between De Gasperi, Giuseppe Spataro and Guido Gonella many ideas of the *Programma di Milano* would later be incorporated into the Republican constitution.³⁰⁶ As a result of this wider consensus, the *Programma di Milano* was worded to conform more closely to the ideals laid out in the papal encyclicals; but there is still a sting in the tail of point two, which reads:

Indipendenza e sovranità della Chiesa e dello Stato, in ordine ai loro fini rispettivi. Rispetto della coscienza e professione dei singoli. Ispirazione cristiana nell'attività dello Stato e nella vita nazionale. Intangibilità sostanziale del Trattato del Laterano. Il Concordato mantenuto nella forma attuale fino a che le altre Parti non ritenessero di modificarlo concordemente.³⁰⁷

This explicit willingness to allow revision of the Concordat is contrary to the oft expressed demands of the Vatican that both the Treaty and the Concordat should form the spiritual bedrock of the new democracy and is more in keeping with De Gasperi's personal dislike of the Concordat. In the subsequent document, *La parola ai democratici cristiani* published in Rome in January 1944, there is no mention of any such possibility – indeed, it is implicitly excluded. The January 1944 document states:

L'efficacia delle riforme statali è vincolata al miglioramento del costume. Per questo lo Stato democratico, il quale contro ogni intolleranza di razza o di religione, si fonda sul più riguardoso rispetto alla *libertà delle coscienze*, ha particolare interesse che le forze spirituali possano conservare e alimentare nel popolo la linfa vitale della civiltà cristiana, che la voce del Romano Pontefice possa risuonare liberamente nel mondo e che la *pace fra Stato e Chiesa*, raggiunta e codificata nei Trattati del Laterano, costituisca una pietra basilare anche dell'Italia del domani.³⁰⁸

In fact, the Dc's 1944 documents are much more focussed on defining religious freedom in terms of the freedom of the Catholic Church, with the Lateran Pacts no longer a peripheral item open to modification, but the immutable source of such freedom.³⁰⁹ All the evidence points to De Gasperi's independence of mind, on matters relating to the Church's immediate aims and interests, being step-by-step subjugated to the will of the Vatican.

³⁰⁶ Pollard, *Italy*, p. 85 and Damilano, *Atti e Documenti della Dc*, p. 9.

³⁰⁷ Damilano, *Atti e documenti della Dc*, p. 9.

³⁰⁸ Damilano, *Atti e documenti della Dc*, p. 25.

³⁰⁹ See Scoppola, *La proposta politica di De Gasperi*, p. 146.

The next document (Feb. 1944, entitled *Tradizione e 'ideologia' della Democrazia Cristiana*) covers a wide range of subjects and matters dealing with the background to Dc philosophies and brings the party even more in line with Catholic social teaching. Under the sub-heading *Aspetti superati*, it states that a number of key issues from the past are no longer significant:

La questione dell'aconfessionalità, ad esempio, intesa come tendenza a non impegnare in rivendicazione di politica concreta l'autorità ecclesiastica, non ha più risonanza dopo che i nuovi statuti di Pio XII circoscrivono esattamente la sfera di attività dell'Azione cattolica e i Trattati Lateranensi, riconoscendo in pieno l'Italia unificata, hanno tolto per sempre ogni riserva richiesta in passato dal mancato accordo fra l'Italia e la Santa Sede. I Trattati Lateranensi vanno difesi soprattutto perché rappresentano la pace fra la Chiesa e lo Stato; ma tra le felici conseguenze di essi non è la minore quella di assicurare alla ricostruzione nazionale il libero e prezioso apporto delle coscienze religiose.³¹⁰

The document also criticises the Socialists and Communists for being totalitarian parties whose integralist ambition emanates from “un monismo materialistico che prescinde dallo spirito, surroga la religione e assume le funzioni dottrinali d'una chiesa.”³¹¹ This is typical of the party political haranguing that accompanied the birth of the new Republic. The document goes on to refer extensively to the Pope's 1942 Christmas radio message, quoting from the conclusions made by the Pope on some of the points covered by the homily, including the dignity and rights of the *persona umana*, the defence of social unity and especially of the family, the dignity and prerogative of work, re-establishing the majesty of law “ancorandola al diritto naturale, riposante nel dominio di Dio, sottraendola all'arbitrio d'una persona, di un gruppo o di una classe” and the conception of the State according to Christianity:

Il senso cristiano dello Stato è *non che esso domini, ma serva*: sia ricondotto cioè al pieno rispetto della persona umana . . . Lo Stato dev'essere consapevole del vincolo eminentemente etico che lo lega alla vita individuale e sociale e dell'essenziale *dipendenza che lo unisce alla volontà del Creatore*.³¹²

In the later documents edited by De Gasperi, there is also a bias towards the corporative system of government – another idea of Pius XI carried forward by Pius

³¹⁰ Damilano, *Atti e documenti della Dc*, p. 43. By ‘coscienze religiose’, the document is referring only to Catholic ‘coscienze religiose’.

³¹¹ Ibid., p. 45.

³¹² My italics. Damilano, *Atti e documenti della Dc*, pp. 46-47. Cf. p. 68 of this section of the thesis: in 1946 the Church was putting out mixed messages as to whether it or the State was the dominant institution. What was clear was that the Church saw itself as the interpreter of the *volontà del Creatore*, to which it considered both citizens and State to be subject.

XII – which does not appear in the Milan document. Ignoring De Gasperi's willingness to revise the Concordat in the Milan document, Scoppola wonders if there is any significance in De Gasperi being keen not to reopen discussions on the Lateran Pacts after the fall of Fascism, since the latter had already expressed his doubts about the Concordat the day before the signing of the Lateran Pacts in 1929.³¹³ He also asks why the documents edited by him pay such close attention to Church social doctrine and in particular to the corporative system. Scoppola's analysis tends to favour De Gasperi being pro-active in his proposals, keen to win the support of the Vatican. He considers that the choices made by De Gasperi

esprimevano reali e meditati convincimenti del futuro leader della Democrazia cristiana [which were] almeno in qualche misura, scelte tattiche destinate a raccogliere intorno al nuovo partito i consensi della Chiesa – certamente desiderosa di non vedere rimessi in discussione gli accordi del '29.³¹⁴

Baget Bozzo thinks that De Gasperi saw himself in a more subservient role, and that he would have seen the Dc as the instrument of Christian social doctrine and thus in a position of dependence on the Church.³¹⁵ Neither commentator suggests that at any stage was there likely to have been pressure from the Vatican to change the 'dangerous' Milan document that allowed for revision of the Concordat. How else can one explain the dramatic changes made between the Milan document and the first Rome document of January 1944, only five months later? The Dc party was in no position to question the Church on religious matters and the fact that De Gasperi wanted to move the party away from its position of dependence on the Church, but was unable to, further suggests Vatican pressure.

So, in defining his new democracy, De Gasperi reluctantly accepted the need for Church support. But under Fascism the strength of the Church outside the Vatican was concentrated in the various Catholic Action organisations. Under their revised Statute of 1945, they came under the direct, centralised control of the Pope. To win over the grass roots, De Gasperi had to first win the support of the Pontiff. This was a difficult task for a man who believed deeply in the re-emergence of a political party with Catholic ideals but which was also endowed with a degree of

³¹³ Cited in Scoppola, *La proposta politica di De Gasperi*, p. 76. Scoppola bases his question on incorrect facts here, since it has already been shown in the first Dc document in 1943 that De Gasperi was actually prepared to allow for the revision of the Concordat, thus maintaining the opposition that he expressed to it in 1929.

³¹⁴ Ibid.

³¹⁵ G. Baget Bozzo, *Il partito cristiano al potere. La Democrazia cristiana di De Gasperi e di Dossetti, 1945-1954*, Firenze: Vallecchi, 1974, pp.59-63.

autonomy. Such a party, acting, as De Gasperi envisaged, within a free political system, would mean that the guarantees required by the Church regarding religious policy would be much more difficult to achieve. Even less comprehensible to the Church would be the potential necessity to form alliances with the secular parties, many of which were hostile to the Church.³¹⁶

So De Gasperi was forced to compromise and the effects on Dc policy, as shown above, were evident from 1944 onwards. At the end of July 1945 the Vatican's position was strengthened when Dossetti was elected vice-secretary of the Dc: he was given the press and propaganda portfolio, with which his allies in the Catholic Action organisation *Civitas humana* collaborated closely; together the group would make a defining contribution to the party on a cultural and organisational level.³¹⁷ Having members of a satellite of Catholic Action in such a prominent position within the party meant that the Vatican was now able to bring enormous pressure to bear on the party policy makers. Scoppola points out that if one examines the votes obtained by the Dc party from 1946 onwards they clearly confirm the link between the party and the Catholic organisations; it is noteworthy, for example, that the electoral success of the party was almost everywhere proportional not only to the number of paid-up members of the party but also to the numbers belonging to Catholic Action.³¹⁸

So from mid-1945 the influence of the *dossettiani* had been factored into the equation and the edges were becoming blurred between the party's policy and the Vatican's vision: the document *Il programma della Dc per la nuova Costituzione*, written for the 1st National Congress of the Dc on 24th – 27th April 1946,³¹⁹ two months before the institutional elections, features strong elements of integralism; this is supported by the attitude and comments of Guido Gonella in reference to the document: “Il partito è una coalizione di uomini che intendono affermare l'integralismo della loro fede”; and later: “dobbiamo finalmente e coraggiosamente uscire da questa barbara notte dei tempi per marciare verso un nuovo evo cristiano”;

³¹⁶ Scoppola, *La proposta politica di De Gasperi*, p. 119. Despite this alleged hostility, none of the lay parties took the opportunity to question the Dc's claims to represent “99% of Italian Catholics” even though they only obtained 35% of the votes in the elections to the Constituent Assembly.

³¹⁷ Ibid., p. 155. See also P. Pombeni, *Il dossettismo (1943-1951). Appunti per una ricerca storica*, in *Nuova rivista storica*, anno LVIII, fasc. I-II, gennaio-aprile 1974, pp.79-131.

³¹⁸ Scoppola, *La proposta politica di De Gasperi*, pp. 155-156. In fact, approximately seventy-five percent of Dc deputies elected in 1946 were current or former members of Catholic Action.

³¹⁹ Damilano, *Atti e documenti della Dc*, p. 231.

and also “come può volere uno Stato laico una democrazia che si chiama cristiana.”³²⁰

However, the document sends out mixed signals and appears to have been less than thoroughly vetted. Under the section *Libertà cristiana* it states:

La Costituzione non deve essere una costituzione di partito o di confessione religiosa, ma la costituzione del *popolo italiano* che è un *popolo cristiano* e che perciò non può volere uno Stato *laico o agnostico*. D'altra parte, lo Stato *conforme* all'etica cristiana non è uno Stato confessionale.³²¹

This appears to be a pro-active attempt at damage limitation, anticipating the furore that would accompany attempts to insert the Lateran Pacts into the new Constitution, though totally contradicting both article one of the Lateran Treaty and a later section of this Dc document entitled *Libertà di credere, professare e propagandare la fede*, which states that the new Constitution will recognise that ‘la Religione del popolo italiano nella realtà della coscienza, della vita, della cultura, del costume e della tradizione è la Religione cattolica apostolica romana’.³²² Under the title *Libertà delle coscienze* the document makes a grudging acknowledgement of the freedom of the individual to worship via whatever faith he or she chooses:

La libertà delle coscienze va intesa nel senso che la coscienza non può essere *costretta* ad accettare suo malgrado la fede, nel senso che nessuno può essere *impedito* di comportarsi secondo la sua personale coscienza, anche se errante in buona fede.³²³

A hardening of the Dc's (and De Gasperi's) approach to the question of the Lateran Pacts and, consequently, yet another measure of Vatican influence in the manifesto can be seen under the title *Libertà della Chiesa*: “La *Questione Romana* è risolta in modo definitivo ed irrevocabile con i Patti Lateranensi.” Under the same section it states plainly that state *laicismo* is unacceptable.³²⁴ In the section entitled *Libertà della Scuola*, it is clear that the Dc party considered the authority of the State – in certain key functions, at least – to be subordinate to that of the Church: under the sub-heading *Diritti della Chiesa*, it stated: “La Chiesa, per la sua maternità spirituale, ha il diritto di *educazione religiosa*. Questo diritto non può essere limitato né dalla

³²⁰ *I congressi nazionali della Democrazia cristiana*, Roma, Ufficio documentazione SPES della Direzione della Dc, 1959, pp. 29ff.] cited in Scoppola, *La proposta politica di De Gasperi*, pp. 146-7.

³²¹ Damilano, *Atti e documenti della Dc*, p. 233.

³²² *Ibid.*, p. 234.

³²³ *Ibid.*

³²⁴ *Ibid.*, p. 235.

famiglia né dallo Stato.”³²⁵ Further limitations to State power are found under *Diritti dello Stato*:

- 1) Lo Stato . . . promuove le pubbliche scuole. La sua funzione è però *ausiliare* o sussidiaria: lo Stato fa le veci della Famiglia; *integra e supplisce* la Famiglia, tutela il diritto del figlio all’educazione.
- 3) La *scuola neutra* o *laica* è assurda ed irrealizzabile, poiché ogni educazione non può non avere un contenuto *spirituale e morale*. La cosiddetta neutralità, e il cosiddetto laicismo, *tradiscono* la funzione educatrice della Scuola; tutelano gli increduli ed offendono i credenti; non rispettano la volontà dei genitori cattolici.
- 4) La Famiglia italiana è famiglia cristiana, ed esige che nella scuola la *Religione* sia veramente *fondamento e coronamento* di ogni forma di educazione.³²⁶

So with the Dc containing a large number of Catholic Action members, many with close links to the ecclesiastical hierarchy, influencing policy, and the support of the Vatican’s enormous organisational and electoral machine (without which the Dc would have been a much less attractive and effective party), one could argue that De Gasperi, the clear choice of both the Vatican and the USA, was something of a ‘puppet’ leader. This, however, would not be a fair assessment of his undoubted leadership skills which would become evident in the ensuing years. But the party as a whole was seen by many of its opponents, at the time of the Constituent Assembly and arguably beyond, as little more than a satellite of the Vatican, acquiescing to its desire to create a country whose aims, morals and daily routines were guided by its own diktats: the extent to which such an influence inspired or even dictated the Dc’s work in the debating chamber of the Constituent Assembly will be examined in Section B.

c) *The vision of Catholic Action*

As little as two days after the elections to the Constituent Assembly, i.e. on the 4th June 1946, the representatives of the various branches of Catholic Action (Ac) met to discuss how they could promote and co-ordinate their efforts to guide and assist the work of Catholics in the Assembly. The Assistant Director General of Ac, Monsignor Borghino, was careful to point out to those who had voted on the second, institutional, question put to the electorate

³²⁵ Ibid., p. 237. It should be borne in mind that what the Church understood by its right to exercise *il diritto di educazione religiosa* was its own control over religious education in state schools.

³²⁶ Ibid.

il loro dovere, quello cioè di accettare, se monarchici, con spirito di disciplina e di serena collaborazione la nuova forma di governo, rendendosi elemento di pacificazione e di fattiva ricostruzione del Paese.³²⁷

It was important that these Catholics who had voted for the monarchy should not allow their disappointment to hinder their efforts in promoting a Christian Constitution.

It is important to bear in mind the enormous, and to the outsider labyrinthine, complexity of attempting to impose order on both the religious and political world of political Catholicism, and this first meeting illustrates some of these difficulties. The Vaticanista Sandro Magister has pointed out that in relation to Rodano's Partito comunista cristiano "fino a tutto il 1942 e anche oltre, non c'è nulla che tradisca nella suprema gerarchia cattolica la determinazione di troncare sul nascere un movimento per molti versi inquietante, sia dal punto di vista politico che dottrinale", and that subsequent events in 1943 provoked in the Vatican "una profonda incertezza di orientamento operativo, che spalanca di fatto inattesi spazi di tolleranza."³²⁸ The Dc leader De Gasperi could hardly be comforted by the fact that in the thinking of the new generation of his party, "il popolarismo scompare fin dalle memorie",³²⁹ with its tradition of political independence from ecclesiastical control, and that rising stars in the party, such as the *dossettiani*, were able to misread Pius XII's 1943 Christmas message as a full endorsement of democracy and as an official pronouncement of Catholic social teaching. Yet the *dossettiani*, as we shall see, were among the stoutest defenders of provisions in the Lateran Pacts which raised the most serious questions about such democratic credentials.

Although by the time of the meeting of 4th June, De Gasperi had managed to gain the support of the Church for a single party of Catholics, there were many Catholics in other parties, thus not under the control of the Dc. Some of these, as we shall see, will later cause some embarrassment to the more moderate Dc Assembly members with their extreme integralism. And although by June 1946 Rodano's Catholic communists no longer had a voice within political Catholicism, this was not the case, for example, with Gerardo Bruni's left-wing *cristiano-sociali*. The perspectives of the ecclesiastical component (especially the leadership) of Ac,

³²⁷ Cited from the minutes of the meeting in M. Casella, *Cattolici e Costituente: orientamenti e iniziative del cattolicesimo organizzato (1945 – 1947)*, Perugia, Edizioni Scientifiche Italiane, 1987, p. 287.

³²⁸ S. Magister, *La politica vaticana e L'Italia (1943-1978)*, Rome, Riuniti, 1979, p. 13.

³²⁹ *Ibid.*, p. 16.

moreover, were more likely to have their centre of gravity focussed on matters affecting the institutional status of the Church than could be assumed to be the case with the bulk of the laity, on whom the activities and effectiveness of the movement would depend.

The meeting in question consisted of representatives of the Presidency of the different components of the umbrella Ac, some clearly galvanised by the tasks for Catholics in the new Constituent Assembly, with the inevitable tensions over responsibilities and tasks. According to the minutes of the meeting, Monsignor Borghino states the importance of problems relating to the family, education etc. “in difesa ai patti lateranensi.” To this only too evident attempt on the part of the ecclesiastic to link all the concerns of lay Catholics to the Lateran Pacts, Francesco Murgia, who has just been elected Dc deputy to the Assembly, immediately replies that the principles governing such matters in the Constitution should be sought “prescindendo dalla difesa dei patti esistenti.”³³⁰ At this stage of development, not only does Murgia separate the concerns of lay Catholics from the institutional question of Church/State relations, but his reference to “patti esistenti”, in contradistinction to Borghino’s “patti lateranensi”, indicates an openness to the possibility of revision which will have been noted. As indicated, further on in the minutes to the meeting, Luigi Gedda, at this stage President of Young Catholic Action, in a move which seems calculated to avoid Dc obstructions, proposes sending directly to the Assembly “contributi di studio e direttive per tutti i problemi che sono di interesse dei cattolici o particolarmente dell’Ac”, to which the lawyer Cassano responds that Ac should, even though maintaining its independence, make its contribution through the Dc.³³¹ Mons. Rota supports Gedda but Mons. Guano, Cassano and Murgia, are all opposed and propose a more articulated and phased approach in line with discussions in the Assembly.³³²

It is impossible, of course, to read the minds of the participants, but what seems to emerge from the minutes of this important initial meeting of Ac is that a series of manoeuvres aimed at placing the inclusion of the Lateran Pacts, at least as they stood at the time, at the top of the Dc agenda were not successful. This despite clear indications in Dc documents up to this point that the party had moved in this direction. At this stage, there would have been many Dc members (De Gasperi

³³⁰ Casella, *Cattolici e Costituente*, p. 288.

³³¹ Ibid.

³³² Ibid., p. 289.

included) who still associated the Pacts with the previous regime, and had not perhaps reflected on arguments about separating the Pacts juridically from the regime with which they had been signed. The other major difference with the previous situation was that the Dc was now reinforced with elected Dc deputies, and the atmosphere within the party had been changed and galvanised, with its position at this early stage still uncertain.

The discussions at the meeting of the 4th June had clearly been thought about by the time of the consultative meeting of Ac on the 21st of the same month. In his report to the meeting, the General Secretary (soon to become President) of Ac Vittorio Veronese proposed proceeding on two fronts with the organisations relations with the Constituent Assembly. It would contact selected members of all parties (it did not specify Catholics, but may indeed intend this) but it would also delegate to ICAS (Istituto Cattolico di Attività Sociale), its most suitable component for this task, the task of setting up commissions for providing guidelines and documentation to parliamentary commissions on matters relating to education, the family, trade unions and Church/State relations.³³³

During the next few months ICAS worked on these projects, and eventually formulated its conclusions in the field of Church/State relations in a set of *conclusioni cattoliche* which it then sent to the President of Subcommittee 1 Umberto Tupini (and probably Giuseppe Dossetti) on 22nd November 1946 and to the Vatican Secretariat of State and *Civiltà Cattolica* on 25th November 1946.³³⁴ The *conclusioni* were also sent to the President of the Assembly Giuseppe Saragat (Psli) and the President of the Commission of 75 Meuccio Ruini (Pdl).³³⁵ The ICAS objectives were thus openly declared, but could not thereby be assumed to be binding on Dc members of the subcommissions or the Assembly. And by being sent to Saragat, Ruini and Tupini they were being addressed also to the bodies they chaired.

The *conclusioni* were presented in four sections.³³⁶ Briefly, it requests an invocation of God's name and adherence to the great principles of Christian morality – the omission of which would be an offence to the common conscience of the nation. The Constitution should recognise that Catholicism is the religion of the Italian nation, and should reflect this in its legislation and administration. It must also

³³³ See the minute in *Ibid.*, p. 289.

³³⁴ *Ibid.*, pp. 296-7. It is reasonable to assume that both Tupini and the Vatican Secretariat of State would have been kept abreast of, and consulted over, the work of ICAS while it was in progress.

³³⁵ With Ruini receiving a copy of the *conclusioni*, it is likely that all three subcommissions would at least have been aware of the document and its contents.

³³⁶ The text can be found in Appendix III of this thesis and Casella, *Cattolici e Costituente*, pp. 297-8.

guarantee freedom of religion, conscience and religious practice ('culto'), of whatever faith or opinion; this is followed by a lengthy argument as to why this equality of freedom does not imply 'equiparazione' or levelling, or 'uguaglianza di regolamento' for all religions. Finally it asks for the Constitution to declare in favour of "la conservazione integrale dei Patti Lateranensi" and the impossibility of their alteration without the agreement of the Holy See.

This was a powerful document. Ac, of which ICAS was a component, could claim to be speaking for a membership of about 2.5 million outside parliament, and these would have claimed to be simply the front line of Catholics within the country. The document, moreover, was taking no chances in relation to the possibility of Catholic waverers in the Assembly. The Ac meeting on 4th June had indicated the possibility of Dc deputies backtracking on the important question of including the Lateran Pacts in the Constitution. Although emanating from ICAS, it must have been clear to all that the document expressed the wishes of the Italian Church and of the Vatican.

Despite all the evidence we have seen so far about Vatican desires for the future and the widespread support in Ac for these desires, which are even prevalent in the post-1944 Dc documents, methodologically we cannot simply assume as a point of departure that arguments on Church/State relations put forward by Dc members in Subcommission 1 and in the Assembly were a mirror reflection of the *conclusioni cattoliche*. The latter had no official status in the Assembly and were sent to it by a body independent of the Dc, indeed independently of all Catholic Assembly members in their function as deputies or members of subcommissions. Many members of Ac did not join the Dc, and vice versa, and there were Catholics in the Assembly who were members of neither. Notwithstanding the above, it would be useful to examine the overall numerical relationship between the Ac and the Dc in order to gain some kind of insight into the impact the *conclusioni* might have had on Catholic deputies. One must bear in mind that in the 1946 elections the Dc had no control over the hierarchy or over its electorate. The Vatican delivered the vote with its doctrine of Catholic unity. 75 per cent of Dc parliamentarians belonged to Catholic Action which, nationally, had 2.5 million members to the Dc's 1 million.³³⁷

Moreover, the Dc, although independent of other Catholic organisations in terms of status and function, was nevertheless part of a powerful network of collateral bodies which all aimed, in their respective fields, to promote Catholic

³³⁷ McCarthy, *The Crisis of the Italian State*, p. 26.

values. One would expect, therefore, particularly on the issue of Church/State relations, at least some Dc members to have had an input in discussions leading to the *conclusioni cattoliche*.³³⁸

Our study will thus be concerned with the debates on Church/State relations, with particular reference to religious freedom and the minority religions, as conducted between the various parties and the members of the subcommissions (primarily Subcommittee 1) and the Assembly. Although the ICAS demands will be seen to reflect constant features of the debates, our intent will be to see how, and to what extent, Catholic arguments either simply repeated, modulated, or modified these demands. We will also see whether there were Catholic arguments which rejected them. Of equal importance, we will examine the arguments of the *laici* on religious freedom and discuss the variety of responses and exchanges between these and the Catholics on this important question. The importance to be attached to the *conclusioni cattoliche* will thus emerge as a result of our study rather than begin as a conditioning factor.

³³⁸ Given its apparently official Catholic origins, there would also have been a certain reluctance on the part of many Assembly deputies to argue against the proposals for fear of incurring the displeasure of the Vatican.

SECTION B:

THE CONSTITUTIONAL DEBATES ON DRAFT ARTICLE 5

(i) How the Constituent Assembly was set up

The elections for the Constituent Assembly and the Institutional Referendum to decide whether Italy should be a Monarchy or a Republic were both held on 2nd and 3rd June, 1946. For the Constituent Assembly elections, the votes for the parties were: Dc: 35.2%, Psi: 20.7%, Pci: 18.9%, Udn (liberals): 6.8%, Uq ('qualunquisti'): 5.3%, Pri: 4.4%, Bnl (monarchists): 2.8%, others: 5.9%.³³⁹ It is important to make the point at this stage that in some of these formations, particularly in the case of the Udn and the Bnl, political positions and allegiances were fluid and constantly changing throughout the life of the Constituent Assembly. Particularly in the case of the Udn, with its strong liberal component, but not to be ignored in the case of the monarchist Bnl, views on religious liberty were not uniformly held. One cannot, therefore, think in terms of a "party line" for these formations, as one can with the Dc, the Pci and the Psi. A further difficulty for the reader of the debates is that members identified in the "Misto" group were drawn from the large number of smaller, often single-member, groupings (listed in Appendix II). During the period of the debates there were also parties that appeared and disappeared with a baffling regularity.

As far as the main political parties were concerned, one could expect the Dc to be favourably disposed to the protection of the Vatican's (political and international) and the Holy See's (spiritual and ecclesiastical) interests. At least at the start of the debates, one could also expect both the Pci and the Psi to support exclusion of the Pacts from the Constitution, which does not necessarily mean hostility to the Pacts as an independent agreement outside the Constitution. As we shall see, the Psi maintained this position throughout the debates, while the Pci, for various reasons discussed in this section of the thesis, eventually performed a "u-turn" and voted with the Dc for inclusion of the Pacts. With regard to the minority parties, the lay parties, such as the Udn and the Pda, remained strongly opposed to the Pacts, while right-wing minority parties such as the monarchist Bnl and the Uq were largely in favour of the inclusion of the Pacts. They remained consistently eager to do the bidding of Catholic Action and the Church, and at times presented integralist arguments which must have been embarrassing even to the latter.

³³⁹ These statistics are compiled from a number of sources. For an explanation of these and other abbreviations of party names, see glossary to Appendix II.

In the Institutional Referendum 54.3% of the electorate voted in favour of a Republic. On 28th June, the independent Liberal Enrico De Nicola was elected provisional Head of State by the Constituent Assembly. It was clear to all parties that the new Republican Constitution would be both the foundation for future legislation, but in some ways even more importantly, the terrain which would provide the framework of legitimacy for all future political struggles. In this sense, the interlocutors were aware of the fact that they should not allow existing political differences or current political events to have too great an influence on the framing of a founding document able to accommodate future developments. The Pci leader Togliatti, in a speech on national unity in Naples, as far back as April 1944, had made observations looking forward to a Constituent Assembly, and its importance in precisely these terms.³⁴⁰ There is therefore a sense in which the debates are meant to be detached from current political events, and rightly so.

This is a position of principle which can be universally agreed. On the point which will be at issue in this study, however, the question will revolve around the protection of the interests of the Church. As the expert constitutionalist Calamandrei, and others, made clear, from a strictly juridical point of view there was no justification for including international agreements (such as the Pacts) in the debates. However, it also became clear in the debates that no political parties wished to threaten the position of the Church. Why, therefore, did the Christian Democrats, as we shall see, insist on the debate and even on the inclusion of the Pacts within the Constitution? Was this a point at which the objective position of principle was not maintained? It is, of course, possible to use the argument of Luigi Pestalozza that by the time of the constitutional debates, “andava affievolendosi il *vento del Nord*”, and that at the time of the vote on the issue “la primavera del 1947 segna indubbiamente il momento di una sistematica regressione della Dc rispetto alle posizioni più avanzate precedentemente assunte”.³⁴¹ As we shall see, many of the arguments during the debate revolved precisely around this question.

³⁴⁰ See P. Togliatti, “The Communist Policy of National Unity (1944)”, translated by Derek Boothman in *On Gramsci and Other Writings*, London, Lawrence and Wishart, 1979, pp. 29-65, esp. pp. 48-50 and 58-59.

³⁴¹ L. Pestalozza, *La Costituzione e lo Stato*, Roma, Riuniti, 1975, pp. 31 and 33. The ‘vento del nord’ refers to the strong leftist orientation of the anti-Fascist alliance which by this time was weakening in response to emerging conservative pressures which had begun to find their way into policy discussions.

With the Constituent Assembly consisting of 556 members,³⁴² it was considered necessary to nominate a smaller Commission to deal with the drafting of the Constitution, and so a Commission of 75 was proposed, to which all parties had the opportunity of nominating members. The Commission of 75 was split into three subcommissions, each with responsibility for drafting a specific area of the new Constitution, and an editing Committee. Subcommission 1 contained 18 members and dealt with the rights and duties of citizens, Subcommission 2 contained 38 members, divided into two separate committees, and dealt with the constitutional organisation of the State, Subcommission 3 also contained 18 members and dealt with socio-economic affairs. The editing committee was initially made up of 18 members taken from the three subcommissions.³⁴³ For the purposes of this thesis, it is the work of Subcommission 1 on the inclusion of Lateran Pacts in the Constitution and its impact on the religious minorities that will form the focus of my analysis. However, it is worth discussing a few general points regarding the subcommissions before I embark on the analysis of the relevant debates.

Deciding who went into each subcommission was a very disorganised affair with no actual guidelines for the parties. President Ruini proposed that the parties themselves should choose their representatives on the three subcommissions.³⁴⁴ The *democristiano* Ezio Vanoni observed that to the second Subcommission should go

quei colleghi che si sentiranno più preparati sui i problemi di struttura dello Stato, mentre alla prima andranno quelli più preparati spiritualmente e tecnicamente alla discussione dei grandi argomenti dei diritti fondamentali dell'uomo e della libertà.³⁴⁵

The imbalance in the party representation in the subcommissions, was not of great concern to the leader of the Bnl, Roberto Lucifero: “Se anche le Sottocommissioni non riprodurranno esattamente la proporzioni dei partiti politici nell’Assemblea, non

³⁴² See Appendix I.

³⁴³ For details see Appendix II. There were at least two editing committees during the lifetime of the Assembly. The first, as mentioned above, had 18 members: Ruini – President, Ambrosini (Dc), Calamandrei (Pda), Canevari (Psi), Cevolotto (Pdl), Dossetti (Dc), Fanfani (Dc), Fuschini (Dc), Ghidini (Psi), Grassi (Udn), Grieco (Pci), Marinaro (Bnl), Moro (Dc), Perassi (Pri), Rossi, Paolo (Psi), Terracini (Pci), Togliatti (Pci), Tupini (Dc). Comitato di Redazione: Source – Archivio della Camera dei Deputati, Busta 80, Fascicolo 3, p. 72. On 19th February, 1947, another Committee was nominated by Ruini, the President of the Constituent Assembly, and contained only eleven members: Rubilli (Udn) - President, Natoli (Pri) - Vice-President, Bozzi (Udn) – Secretary, Bencivenga (Bnl), Bertini (Dc), Calamandrei (Indipendente), D’Aragona (Psl), Fabbri (Misto), Grieco (Pci), Pertini (Psi), Alessandro Scotti (Pdl). Taken from De Gasperi, *De Gasperi Scrive*, (vol. 2), p. 217.

³⁴⁴ Segretario Generale (Ed.) *La Costituzione della Repubblica nei lavori preparati della Assemblea Costituente (CRAC)*, vol. 6, Roma, Camera dei Deputati, 1970, p. 22.

³⁴⁵ CRAC, vol. 6, p. 19.

crede che sia il caso di preoccuparsene, appunto perché la decisione finale spetterà poi alla Costituente.”³⁴⁶

This lack of co-ordination in the setting up of the Assembly has not escaped criticism from political commentators. Furlong is scathing on the way the Constituent Assembly was organised and on many aspects of the work of the subcommissions: although the members were intended to be technical experts, they also had party-political axes to grind with the result that their work became a complex amalgamation of legal technicalities and party compromise. He also criticises the length of time that passed in discussions over the election process and De Gasperi’s decision to hold the institutional referendum before the Assembly was set up, which the parties of the Left thought should have been decided in the Assembly. The Assembly was further constrained by “the difficulties in its relationship with the provisional governments, and by the generally low level of public interest in its proceedings.”³⁴⁷ All this contributed towards the Assembly establishing a pattern which Furlong claims was to be followed, to a considerable extent, by that of the ordinary Parliaments:

practical lack of accountability to public opinion, utter disrespect for deadlines, use of detailed legal technicalities to mask fundamental disagreements, the priority of seeking as wide an agreement as possible, and not least the vulnerability of Assembly debates to the wilfulness of backbench deputies.³⁴⁸

Another significant problem that manifested itself during the work of the subcommissions was the difference in approach of the major parties to their selection criteria for members of the Constituent Assembly: the Socialists and the Communists, although having eminent jurists in their ranks, chose not to send them into the Assembly, fearing that their formality would hinder the constitutional renewal they hoped for. The Dc party, on the other hand, was overflowing with judges, constitutional lawyers and experts in ecclesiastical law, all keen to make their mark on the new Constitution, principally by finding a way to guarantee the juridical security that the Vatican had gained for itself with the Lateran Pacts of 1929. In this way it could ensure that the Catholic Church regained the influence over Italian political life it had enjoyed prior to Italy’s unification and, most importantly, it would

³⁴⁶ Ibid., p. 22.

³⁴⁷ Furlong, *Modern Italy*, p. 63.

³⁴⁸ Ibid., p. 64.



guarantee that the new democratic Republic would be imbued at all levels – social, economic, political and spiritual – with Catholic values.³⁴⁹

As mentioned above, the Dc was well-represented in the Assembly by experienced jurists, experts on ecclesiastical law, many of them *ex-popolari* from pre-Fascist parliaments. But it was the younger generation of politicians from the ranks of Catholic Action, the so-called ‘professorini’ who would have the biggest impact on the work of Subcommittee 1, although their work in the Assembly would not be as straightforward as their majority might indicate, as Giovagnoli points out:

Il risultato del lavoro dei ‘professorini’ suscitava l’insoddisfazione della maggior parte degli ambienti ecclesiastici, che pure li avevano sostenuti, perché questi non videro accolto il disegno di uno ‘Stato cattolico’. Una profonda lontananza separava inoltre la massa dei cattolici dai loro rappresentanti in aula.³⁵⁰

Giovagnoli, like Furlong, considers that the whole of the work of the Constituent Assembly was carried out amid a general lack of interest in the country, and the isolation of the *costituenti* from the population at large

rappresenta un dato rilevante: non a caso il loro progetto muoveva in gran parte dall’idea di una influenza dello Stato sulla società, del centro sulla periferia. La situazione di separazione sociale e culturale dei costituenti cattolici, selezionati e sostenuti, prima ancora di ricevere la legittimazione del consenso popolare, dall’istituzione ecclesiastica, ha rappresentato una importante premessa dell’approccio da questi sviluppato nei confronti della realtà del paese.³⁵¹

But the ‘realtà del paese’ suggested by Giovagnoli was not the ‘realtà’ of the Catholic *costituenti* which emerged from their discussions and arguments. As we will see, they frequently claimed to be speaking in the name of a constituency that was much larger than represented by their electoral mandate. Along a strictly *cattolicillaici* divide, the Dc could with some justification claim to be speaking for about 35% of the voters. Those who had voted for the *laici* (socialists, communists, republicans and liberals) were about 51%. Even if we assume all the remaining voters to have favoured Catholic opinion on the issues to be discussed in this thesis, which is far from clear even from the debates, this does not constitute a majority.

Looked at from this point of view, the Catholic arguments which, as we shall see, frequently claimed to be representing the ‘views of the nation’, ‘the vast

³⁴⁹ See Scoppola, *La repubblica dei partiti*, p. 184.

³⁵⁰ Giovagnoli, *La cultura democristiana*, p. xvi.

³⁵¹ Ibid.

majority of the people', 'a country of 99% Catholics', appear extravagant. In view of the unmistakable presence of the *laici* in both subcommissions and Assembly, the Catholics could hardly have been unaware of at least an element of implausibility and instrumentality in the claims for numerical preponderance for their arguments.

It is clear from the study of Catholic scholars like Giovagnoli and Scoppola that political Catholicism, after the demise of the *popolari*, had lost a great deal of the *laicità* which had inspired the founder of the Ppi; and under the pressure of fascist suspicion and hostility towards Catholic organisations, it drew closer to the institution of the Church, and became more 'ecclesiastical' in character. Thus De Gasperi found himself leading a party in which the new recruits, to use his own expression 'erano tornati in sagrestia'. Many of these new recruits had come from the ranks of Catholic Action, for whom the defence of the Church and the privileges it had acquired in the Lateran Pacts was a priority. We shall give some indication in the pages that follow of how and why influence and pressure from this quarter may well provide important insights for our assessment of Catholic arguments.

(ii) Some preliminary observations

Despite intense rivalry and negative campaigning that pervaded the run-up to the institutional elections of May and June 1946, by the time the Constituent Assembly was inaugurated, the party political tensions had largely given way to an atmosphere of co-operation. In fact, Jemolo was convinced that

tutti gli uomini di parte cattolica, anche quelli che rivestirono poi eminenti posizioni politiche, e che dimostrarono tutto il possibile irrigidimento nella questione della inserzione degli Accordi lateranensi nella Costituzione, apparivano, a chi parlava loro in quel periodo, pieni di moderazione, di reale spirito conciliativo, di buona volontà.³⁵²

Although there were indeed elements of conciliation and agreement between the deputies of all parties, it would be misleading to ignore strongly held divergences and disagreements – particularly regarding how to deal with the thorny issue of relations between Church and State.

The 'laico' Mario Cevolotto (Pdl) advocated that the State should put itself

al di fuori – non al di sopra – della Chiesa e delle Chiese e proteggendole e garantendole tutto nello stesso modo e secondo un identico principio di

³⁵² Jemolo, *Chiesa e Stato*, p.285.

libertà, lo Stato adotterebbe palesemente il metodo del laicismo in confronto a quello del confessionnalismo.³⁵³

He accepts that such a situation would be the cause of much debate in Italy:

La forma concreta . . . che il regime assumerebbe da noi è diversa e potrebbe rapportarsi alla definizione e alla sistemazione che il Ruffini ha dato del *giurisdizionalismo aconfessionale* in una sua opera fondamentale.³⁵⁴

In his preliminary address to the Constituent Assembly on 25th June 1946, De Gasperi commented: “Operano nella Repubblica italiana le tendenze universalistiche del Cristianesimo, quelle umanitarie di Giuseppe Mazzini, quelle della solidarietà del lavoro, propuginate dalle organizzazioni operaie.”³⁵⁵ One should note that whilst acknowledging the important part that different political and ideological traditions would play in drafting the Constitution, pride of place is given to the ‘tendenze universalistiche del Cristianesimo’, and these would be the driving force behind Catholic arguments in much of the debate on Church/State relations in the Constituent Assembly.

Indeed, the President of the 1st Subcommittee, Umberto Tupini goes even further: he speaks of the Constitution in terms of it being a Christian Democrat Constitution based on the precepts of freedom, social justice and Christianity, the purpose of which was to bring about “una visione integrale della persona umana.”³⁵⁶ For Tupini, Christianity is the key element in the formation of the Constitution: “Il Cristianesimo, cui guarda con speranza rinnovata l’attesa di milioni di uomini, può veramente offrire il punto d’incontro, la base per questo sforzo fecondo.” And quoting

³⁵³ Archivio della Camera dei Deputati (ACD) ‘Inventario dell’Assemblea Costituente’ (Quaderni dell’Archivio storico: n. 6), Busta 74, Fascicolo 1, *Commissione per la Costituzione: 1° Sottocommissione, Relazione del Deputato Mario Cevolotto sui ‘Rapporti fra Stato e Chiesa (Libertà religiosa)’*, Roma: Camera dei Deputati, 1999, p.40. Note: Busta 74 contains the *relazioni* of individual members of Subcommittee 1 who had been appointed to examine individual issues within the Church State relations framework. There are no dates marked on the typed documents, but a note in the catalogue (*Quaderno* no. 6) indicates that these *relazioni* were presented to the subcommittee between 27th August, 1946 and 13th February, 1947.

³⁵⁴ Ibid. Cevolotto is here referring to F. Ruffini, *Corso di diritto ecclesiastico italiano; la libertà religiosa come diritto pubblico subiettivo*, Torino, 1924. *Giurisdizionalismo* as a general term describes that current of juridical thought which stands for a separation of church and state but subordinates ecclesiastical to state legislation. There are further theoretical refinements: *giurisdizionalismo confessionista*, in which the confessional state affords protection to the Church in a relationship of reciprocity; and *giurisdizionalismo laico* in which the state exercises control over ecclesiastical legislation. Francesco Ruffini, a Catholic jurist with liberal tendencies, Senator in 1914 and Minister of Education in 1916, theorized a *giurisdizionalismo aconfessionale* intended to guarantee both sovereignty of the state, but also a genuine independence of the Church. His two major works were *La libertà religiosa* (1901) and *Corso di diritto ecclesiastico* (1924). Cited in *Dizionario di storiografia*, Milano, Mondadori, 1996, p. 911.

³⁵⁵ Segretario Generale (Ed.) *La Costituzione della Repubblica nei lavori preparati della Assemblea Costituente* (CRAC) (8 Volumes) Roma: Camera dei Deputati, 1970, vol. 1, p.3.

³⁵⁶ Ibid., p. 169.

from Ozanam he says: “la democrazia o sarà cristiana o non sarà.”³⁵⁷ Tupini interprets Article 1 in a particularly Catholic way: the new Republic has work and the worker as its bedrock: it depends “sull’uomo socialmente attivo, sul cittadino che ha nel lavoro lo strumento della sua fatica e della sua redenzione.”³⁵⁸

In an article written for the Dc newspaper ‘Il Popolo’ on 4th March 1947, Aldo Moro claimed that two of the great achievements of the Dc deputies in the Constituent Assembly were the “affermazione dell’indipendenza della Chiesa e della originarietà del suo ordinamento” and the “richiamo costituzionale dei Patti Lateranensi.”³⁵⁹ These issues, sincerely defended by Christian Democrat deputies, “costituiscono . . . una concreta garanzia di quella democraticità del nuovo Stato, la quale sembra essere nei voti di tutti”.³⁶⁰ Moro makes no mention, however, of the effect of the successful inclusion of the Lateran Pacts into the Constitution on the broader question of religious freedom, particularly in relation to minority religions. In Section B, therefore, I will examine how the Dc deputies succeeded in having the Lateran Pacts included in the Constitution, and the effects of this on the provisions concerning religious freedom and the religious minorities.

By far the greater share of the debates was devoted to the highly contentious issue of inclusion of the Pacts in the Constitution, initially covered by draft article 5. In the final version of the Constitution, the article referring to the Pacts became article 7, clauses 1 and 2 remaining identical to their draft versions.³⁶¹

Much of the debates concerning draft article 5 (i.e. not only clauses 1 and 2, but also other clauses, which found their way into other articles of the final version of the Constitution) raised questions concerning not only the Catholic Church and the Vatican, but issues relating to the freedom of other religions, which eventually led to provisions principally in articles 8 and 19 of the final version of the Constitution. Thus although the discussions leading directly to these articles in the final version may seem relatively brief, this is because much of the discussion relevant to the problems they dealt with had already been discussed in the all-important draft article

³⁵⁷ Ibid., p. 170.

³⁵⁸ Ibid.

³⁵⁹ Moro, A. *L’apporto democristiano alla nuova Costituzione*, in *Il Popolo*, 4th March 1947, p. 1. In fact, the Pacts would not be voted into the Constitution until 25.03.1947. Moro is displaying in this statement one of the Dc characteristics throughout the period of the debates; namely a seemingly unwarranted assurance about the outcome of the debates on this article.

³⁶⁰ Ibid.

³⁶¹ The draft version of the New Constitution was presented to the President of the Constituent Assembly on 31 January 1947. It consisted of 131 Articles and 9 Final and Transitory Provisions (See CRAC, vol. 1, pp. lvii – lxxiii). By 22.12.47, the final version would contain 139 Articles and 18 Final and Transitory Provisions.

5. Moreover, since the latter, in so far as it related to the inclusion of the Pacts in the Constitution, was given priority and voted upon earlier than the questions relating to the freedom of minority religions, what could be decided in relation to the latter was in many respects already decided in advance. The consequences of this procedure will become evident in our analysis.

Suggestions for each draft article were formulated by nominated *relatori*. They would then submit these suggestions to their subcommission for discussion, possible amendment and voting. This was the general rule, although some proposals for discussion were formulated within the subcommissions. With regard to my analysis of the discussions of the draft articles, each topic of discussion within the subsections of the thesis will be treated first in relation to debates in Subcommission 1, and then in relation to the plenary session of the Constituent Assembly. In some cases the procedures that were followed, and the manner in which amendments were proposed, do not allow for such treatment, so that the entire discussion of some topics took place in the Assembly.

In the interests of clarity, I have had to present my narrative in thematic form, taking account of the chronological developments of the topics. Given that the debates were not organised on this basis, that the calendar was purely chronological and decided according to draft motions and articles, where deputies could speak freely and range from one aspect of a topic to another, with numerous digressions and/or repetitions, to base the present discussion on a form identical to the debates would have produced an equally confused narrative.

In this sense, I am aware of the fact that my presentation of the debates, quite apart from analysis and comments, is itself an interpretation. A broad and representative selection of contributions to the debates, which I have attempted to provide, is my attempt to ensure the fidelity of my study to the development and contents of the debates.

The international situation, by the time of the debates, while not having a direct, or at least an explicit impact, on the debates in the Constituent Assembly, was having an indirect effect. The strong impulse towards European integration, for example, initially promoted by individuals like Altiero Spinelli, and favoured by De Gasperi and the French Foreign Minister Schumann, was inspired by the idea that such integration would, in the future, be a powerful protection against national conflicts and escalation into war. The most dramatic evidence of this influence appears in the wording of article 11 of the Italian Republican Constitution:

L'Italia ripudia la guerra come strumento di offesa alla libertà degli altri popoli e come mezzo di risoluzione delle controversie internazionali; consente, in condizioni di parità con gli altri Stati, alle limitazioni di sovranità necessarie ad un ordinamento che assicuri la pace e la giustizia fra le Nazioni; promuove e favorisce le organizzazioni internazionali rivolte a tale scopo.³⁶²

Although European integration did not occur as soon as, or with the force desired by, early Federalists like Spinelli, by the time of the ratification of the Constitution it had had its effect.

In the area of religious freedom, we have already seen the confidence that Italian Protestants had in the ability of the United Nations to intervene at an international level on their behalf. We will see later in the thesis De Gasperi's difficulties in responding to questions, on a visit to America, about the insertion of the Lateran Pacts in the Constitution. By the time of the debates, however, the beginning of the Cold War had strengthened the position of the Dc and the Vatican in Italy, and must have given substantial psychological support to the determination of the Catholics to include the Pacts in the Constitution. In relation to the Left, while it is not evident that these developments had much influence on the Socialists, nor on the Liberal opponents of insertion, it increased Togliatti's determination not to inflame the situation by intensifying areas of potential conflict with the Dc and the Vatican. As we will see in the course of our analysis, this might go a long way towards explaining the Pci's 'u-turn', a change of direction which would effectively win the day for the Catholics.

(iii) A Christian Democrat agenda

It will be clear from the ensuing discussion of the debates at the Constituent Assembly that the Christian Democrats were determined from the beginning to include the Lateran Pacts in the Constitution. What follows, therefore, will be an attempt to illustrate the various components of the Christian Democrat strategy in the arguments they used to persuade their opponents, skeptics, or any who remained uncommitted. In the process we will also be able to assess the extent to which arguments made by the Catholic members of the Assembly followed the proposals of the ICAS document discussed earlier.

As we shall see, their opponents attempted to meet their arguments, sometimes in a measured fashion, but also at times with degrees of exasperation. This was largely the result of what seemed to a number of experienced

³⁶² See Appendix IV for full Constitution.

constitutionalists, the Catholic imperviousness, with one or two notable exceptions, to arguments about correct constitutional ideals. The Catholics were not limited to the Christian Democrat party, and frequently received strong support from members of minority parties. As we shall see, however, the main components of the Catholic arguments were guided by the *dossettiani*, namely Dossetti, Moro and La Pira, all members of Subcommittee 1, responsible for drafting the relevant articles. It is very clear that this group of young Catholic militants, recruited from the ranks of Catholic Action, determined the agenda for discussions around the inclusion of the Pacts. And one of the first arguments they wished to establish was that the Church, as an ‘ordinamento originario’, could not be subordinated to the State in its foundations or the free exercise of its spiritual function.

B1 Draft article 5, clause 1

“Lo Stato e la Chiesa Cattolica sono, ciascuno nel proprio ordine, indipendenti e sovrani.”

Clause 1 of Article 5 was important for the Church at a time when

era in piena auge il dogma della statalità del diritto, cioè il presupposto allora imperante che solo l'organismo statale fosse non solo la massima ma anche l'unica fonte di norme giuridiche e che quindi tutti gli altri organismi estrastatali, tra cui la Chiesa, non costituissero ordinamenti giuridici primari, cioè non fossero per natura loro indipendenti e sovrani sibbene dipendenti e derivati dall'organismo e dell'autorità dello Stato.³⁶³

Postwar the situation was more nuanced. The State was no longer the only institution capable of creating its own laws and of insisting on the right to have other principles enshrined in state legislation: there was also the Church “alla quale deve riconoscersi la natura di un tipico ordinamento giuridico originario e primario, cioè indipendente e sovrano.”³⁶⁴ This theory was at the heart of the Dc arguments for this clause and was in accordance with the theories expounded by Francesco Ruffini, Francesco Scaduto and Santi Romano during the early part of the 20th century and championed in the debates by Giuseppe Dossetti and his colleagues.

(i) The Church as an ‘ordinamento originario’

Subcommission 1

The arguments in this subcommission are based on proposals and counter-proposals presented to Subcommission 1 by Giuseppe Dossetti (Democrazia cristiana) and Mario Cevolotto (Partito democratico del lavoro). Dossetti opens his argument by emphasising the “*realtà sociale*” of Catholic predominance in Italian society. However, the Dc party is quite prepared to accept the “*pluralità della vita religiosa*” and the “*pluralismo delle varie religioni*”, immediately stating the proviso that in its relations with the State, the Catholic Church in Italy is “*molto diversa dai fenomeni religiosi che si concretano in altre confessioni e in altre associazioni religiosi*”.³⁶⁵ In addition to using the argument that Catholicism is the majority religion in Italy, he also argues that it holds this special position because it has all the characteristics and basic functions of “*un ordinamento giuridico autonomo*”: this, he claims, is not only

³⁶³ P.A. D'Avack, *I rapporti fra Stato e Chiesa* in P. Calamandrei, *Commentario sistematico alla Costituzione italiana*, Firenze: G. Barbéra, 1950, p. 101.

³⁶⁴ Ibid.

³⁶⁵ CRAC, vol. 6, p. 719.

a political fact but also a scientific fact.³⁶⁶ Thus, the Catholic Church in Italy operates within its own sphere, completely independently of the State. Church/State relations can therefore only operate at a bilateral level and cannot be dictated by one or other of the parties. Such an action, were it to occur, would nullify any distinction between the two systems and lead to either a theocracy, or what Dossetti terms *giurisdizionalismo*. One therefore has to recognise in both “il carattere di originarietà e la necessità di accordi bilaterali”.³⁶⁷ However, the fact of a bilateral agreement between the State and the Catholic Church does not mean that the State cannot enter into bilateral agreements with other religions that have a similar “ordinamento giuridico autonomo”. As we shall see, however, there are more than sufficient reasons in the debates which follow to doubt whether, as far as Catholics are concerned, this is the fulsome acceptance of religious pluralism it seems at first sight.

The issue of *originarietà* is taken up by Giorgio La Pira (Dc). He is fully behind Dossetti’s arguments and reinforces the issue of the Church’s “ordinamento giuridico originario” by stating that if it exists (and being essential to the structure of the Church it must) the State, in regulating its relations constitutionally, cannot fail to recognise its existence. He claims that the first task of the Assembly is therefore to make a pronouncement on its existence.³⁶⁸

La Pira posits two interpretations (*lenti*) of religion: the “lente illuminista” views religion as separate from society, internal and private (a perspective which evolved as a consequence of the Protestant Reformation). The “lente anti-illuminista”, on the other hand, views religion as integral to society, with a strong historical basis and an associative purpose. He takes the latter view to strengthen his argument for the State’s recognition of the Church as an equal party in any negotiations. He believes the old “illuminista” attitude to religion will in future disappear and all States will have to constitutionally acknowledge the existence of the Church as intrinsic to the structure of society. The two key points he wants to see expressed in the clause are “libertà religiosa per tutti; rapporti bilaterale fra i due ordinamenti originari della Chiesa e dello Stato”.³⁶⁹

In response to a suggestion by Togliatti (Partito comunista italiano), Dossetti thinks that a bald statement of independence of each body is too reminiscent of the old liberal maxim ‘libera Chiesa in libero Stato’, and that the Dc would rather

³⁶⁶ *Ibid.*

³⁶⁷ *Ibid.*, p. 720.

³⁶⁸ *Ibid.*

³⁶⁹ *Ibid.*, p. 721.

approach the problem from the point of view of the “*originarietà dei due ordinamenti*” from which the independence of each entity is the natural conclusion. He says that if Togliatti considers that the independence of the two bodies should also be enunciated in the Constitution, the Dc party would agree.³⁷⁰

According to Ottavio Mastrojanni (*Uomo qualunque*), there is no need to recognise the independence of another state (namely the Vatican) in a constitution. A state does not need recognition from another state in order to exist. Thus the Church, even if it is not explicitly recognised as such, would still exist as an “*ordinamento giuridico originario*”. His difficulty with including an explicit statement recognising the Church’s sovereignty in the Constitution of the Italian Republic arises from the potential for the Church to use its rights as an independent state to impose its will and more importantly its laws on citizens whether they believe in it or not.³⁷¹

Dossetti continues to insist on recognition by the State of the *originarietà* of the organisation of the Church, by once again moving the discussion up a stage to the level of the international community,³⁷² to which Cevolotto responds, claiming that it is nonsense to make a general statement recognising all other States, whatever their make-up, simply in order to be able to include a recognition of the Church.³⁷³

Dossetti develops his argument for State recognition of the Church by suggesting that the Church possesses a particular attribute which he calls “*‘asseità’*, cioè, di essere un ordinamento di se stante” saying that if a country enters into negotiations with another State possessing such a characteristic (a reference to Vatican City State and the Lateran Accords) “*evidentemente all’ordinamento giuridico di tale Stato non si potrà contestare il carattere di ordinamento originario.*”³⁷⁴ Cevolotto thinks that one can recognise a State without necessarily having to make explicit statements about its *originarietà*, and criticises Dossetti for pressing this point on an international level, suggesting that he is doing so merely to obtain recognition of the alleged *originarietà* of the Church’s juridical structure.³⁷⁵ He points out that a state can be a member of the international community without necessarily having to recognise in its Constitution the *originarietà* of the legal systems of other states. He

³⁷⁰ CRAC, vol. 6, p. 721-2.

³⁷¹ Ibid., p. 723.

³⁷² Ibid., p. 752.

³⁷³ Ibid., p. 755.

³⁷⁴ Ibid., p. 756.

³⁷⁵ Ibid.

further suggests that there may well be states which do not recognise the *originarietà* of the Church's juridical system.³⁷⁶

The insertion of an additional article dealing with the rules of international law (in tandem with which the Dc members are pressing for recognition of the Church's 'ordinamento giuridico originario') is suggested by President Tupini. However, Togliatti is not persuaded by it "poiché esso riconosce norme del diritto internazionale che non esistono."³⁷⁷ He clarifies the point by saying that while principles of international law are accepted, as yet there has been no codification of those principles.

Whether or not clause 1 should be introduced into the Constitution is a legitimate topic for discussion according to Carmelo Caristia (Dc), but argues that its content should not cause too much concern. He claims that the State already recognises the juridical systems of other states and of the Church. As for potential future conflicts between State and Church law, he thinks that this is a different matter entirely which should not be prejudiced by the recognition of the *originarietà* of the Church as an institution.³⁷⁸ In response, Togliatti points out that recognising the *originarietà* of institutions of state that are continually evolving, as in the case of the United Nations, is "eccessiva e fuori luogo".³⁷⁹ He has noticed a contradiction in Dossetti's argument: if the *originarietà* of the Church is recognised by everyone, why does the Dc want it constitutionalised? Moreover, constitutional recognition would invalidate the Church's claim, because if it were truly 'original', it would not need recognition.³⁸⁰ In Aldo Moro's opinion, recognition of the *originarietà* of the Church is as important as recognising that of other nation states, in that it puts all parties who enter into negotiations on an equal juridical footing, expressed through the format of international treaties. Thus Church/State negotiations should proceed on a similar, common basis, bilaterally as is the case with the Concordat. He attempts to allay the fears of those opposed to the inclusion of the Pacts, by stating that they

³⁷⁶ Ibid., p. 759. That this was a weakness in the Dc's insistence on establishing international status for the Church in the debates is confirmed by Marottoli: quoting Piero Agostino D'Avack, she says that "il fatto che la duplice personalità dello Stato della Città del Vaticano sia stata accettata dallo Stato Italiano che è uno stato membro della comunità internazionale, non vuol dire che debba per forza essere accettata da tutti gli altri Stati membri." Marottoli, S.M. *La Santa Sede nel Diritto Internazionale* www.studiocelentano.it (Thesis published on the Internet) Ch1.7. However in the context of the constitutional debates, this wider recognition was not essential – acceptance of the dual personality of the Vatican by the Italian State was enough to support the arguments for the next clause – the inclusion of the Lateran Pacts in the Constitution.

³⁷⁷ CRAC, vol. 6, p. 778.

³⁷⁸ Ibid., p. 760.

³⁷⁹ Ibid.

³⁸⁰ Ibid.

are open to revision by the terms of an article already included in them.³⁸¹ He ends his argument with a thinly veiled warning: such recognition “contribuirà a mantenere quella pace religiosa che oggi regna in Italia.”³⁸²

In response to the Republican De Vita’s request for clarification of the juridical consequences of *originarietà*, Dossetti says that there is parity between Church and State, since from both have emerged independent juridical systems. Acknowledging this equal status in the Constitution is the only thing which “garantisca che domani lo Stato non devii bruscamente dalla linea di fatto oggi esistente e non presuma di mettere la Chiesa alla stregua di qualsiasi società privata”.³⁸³ Cevolotto calls Dossetti’s bluff in his response: if the only purpose of Dossetti’s article is to recognise the *originarietà* of a state’s juridical system, then it is merely theoretical and should not be included in a Constitution which should be predominantly practical. He points out that Moro’s argument for putting all parties on an equal footing would break down should there arise a subject on which agreement between Church and State cannot be reached, adding that the State must have the power to resolve such matters independently of the Church. He would be agreeable to discuss a formula which stated that relations are regulated by the Concordat and suggests a proposal by Jemolo: “Lo Stato regola i rapporti giuridici con la confessione cattolica cercando, per quanto possibile, di concludere concordati con la Santa Sede”. This would avoid the absurdity, noted also by other *laici*, of including the agreement itself as part of the Constitution. He is, moreover, against any formula that would jeopardise or weaken the sovereignty of the State and furthermore would like to see the freedoms afforded the Catholic Church also applied to other denominations.³⁸⁴

The form of article 5 passed by the first Subcommittee was opposed by Cevolotto and, even though he was one of the original proponents, he also opposes the amendment suggested by the Editing Committee which reads: “Lo Stato riconosce l’indipendenza della Chiesa cattolica nei suoi ordinamenti interni.”³⁸⁵ Cevolotto argues that putting the Church and State on an equal footing does not reflect the liberal democratic concept of a totally free Church within the structure of

³⁸¹ He is referring to Article 44 of the Concordat which states: “If, in the future, any difficulties should arise concerning the interpretation of the present Concordat, the Holy See and Italy will proceed by way of mutual understanding to a friendly solution.” (Pollard, *The Vatican and Italian Fascism*, p. 214.) As far as the Treaty is concerned, there is no mention of the possibility of revision.

³⁸² CRAC, vol. 6, p. 761. See also section B2 c(i) of this thesis.

³⁸³ CRAC, vol. 6, pp. 761-2.

³⁸⁴ Ibid., p. 762.

³⁸⁵ Ibid. p. 146.

the State.³⁸⁶ In fact, he says, the wording should be “free churches”, because whatever the difference in importance or in structure of the individual churches, the State’s position must be the same for all of them, respecting the independence and freedom of them all: “Libera Chiesa nello Stato sovrano.”³⁸⁷ Cevolotto did not, however, receive support in the final analysis from the Communists who, under Togliatti’s firm leadership, on religious questions were prepared to argue their ‘laicismo’ in the debates but drew back, for political reasons, from translating this into their voting practice if it risked creating too much hostility with the Catholics. The Communists were thus readier to compromise, which Moro notes when, in stating that he has been against Cevolotto’s proposal from the outset, adds that he is pleased that Togliatti and others are in agreement with his party’s formulation of the article, which he claims is a compromise formulation.

The Dc’s first request was not for recognition of the sovereignty of the Church, but for recognition of the *originarietà* of its organisation. Moro goes back over the arguments about the wording: State recognition of the “*originarietà del suo ordinamento*” was rejected as being too scientific and was replaced by “*sovranità*”. To Moro, this does not reflect the reality of the situation of the Church in relation to the State. Whereas Cevolotto has said that the independence of the Church must be recognised by the State, Moro considers it guaranteed by its very nature, but only when one recognises the *originarietà* of its organisation. He argues that such recognition by the State does not bring the individual norms of canon law into the realms of State law,³⁸⁸ but allows the Church to exercise its legal system independently in the areas of social life that appertain to the Church. Bilateral agreements would instead come into play in the case of subjects that were of common interest to both Church and State. Moro continues:

il carattere originario . . . non è una innovazione dell’ultima ora che si prospetta, ma è un costante riconoscimento della dottrina e della filosofia del diritto, le quali unanimemente ormai riconoscono che il diritto non è soltanto il diritto dello Stato, ma è il diritto di tutti gli organismi che entro e fuori lo Stato hanno un’effettiva competenza per regolare in modo autonomo le materie di loro spettanza.³⁸⁹

³⁸⁶ In fact, the wording, passed by Subcommission 1, would have had the effect of subordinating the Church to the State.

³⁸⁷ CRAC, vol. 6, p. 146.

³⁸⁸ This would, however, be the case should the Pacts be included in the Constitution.

³⁸⁹ CRAC, vol. 6, p. 146.

To this reassertion of the Church's juridical position based on its *originarietà*, he adds what he calls a social and political consideration: if one refuses to acknowledge the Church's *originarietà*, one is flying in the face of the widespread social conscience of the Italian people, which considers that the Church should not be treated like any other private association, as it has “tale una maestà, tale una larga competenza per quanto riguarda essenziali rapporti umani, ed ha una tale sfera di influenza che va al di fuori e al di là dello Stato singolo”.³⁹⁰ To the *laici* taking part in the debates, this is clearly a political consideration with serious ramifications: presenting the Catholic Church as an organisation that is larger and more influential than any single state and which thus, according to Moro, cannot be bound by the juridical system of any single state is, from the point of view of the sovereignty of those states, a dangerous argument. To give an organisation of such scope any political influence over such a relatively small country as Italy (compared to other countries that come under the ‘Catholic’ umbrella) could compromise the government on the world political stage.

It is the *originarietà* of the Church's juridical system that Moro uses to argue for its relations with the State to be founded on a concordatory basis, and avoid the Catholic Church being treated as just another private body. He also says that he is willing to accept a proposal by Terracini to extend the regulation of State relations with the other religious groups on a broadly concordatory basis.³⁹¹ He closes by claiming that this article “è di straordinaria importanza per la coscienza cristiana del popolo italiano.”³⁹² Moro's position is supported by La Pira: not only is the State an “ordinamento giuridico originario”; there are other earlier forms of such ‘ordinamenti’, the oldest being the Church. His closing argument on this point, however, is perhaps more distinctive for its manifestation of La Pira's Catholic devotion and piety than for its political or juridical acumen, as he appeals to the Subcommittee to vote in favour of the article because of the evident ability of the Church as an immense organism to gather together all human beings and guide them on the path to sanctity and peace.³⁹³

³⁹⁰ Ibid., p. 147.

³⁹¹ This appears to be an important concession by Moro, going against his image as an integralist; however, as Moro would have been only too aware, the minority religious groups were in no position structurally or juridically to establish concordatory relations with the State, and therefore one can only view this concession in the light of this fact.

³⁹² CRAC, vol. 6, p. 147.

³⁹³ Ibid.

The Sardinian radical Emilio Lussu is not convinced by any of the Dc's arguments thus far and has reservations over the text of the editing committee. He points out to the Catholics, who have based their arguments for the privileged position of the Church on the *originarietà* of its juridical standing, that if this is the case, Judaism should enjoy an equal status since its *originarietà* preceded that of the Catholic Church.³⁹⁴

Constituent Assembly

Following the discussions in the Subcommission, during the debates at the Constituent Assembly, Stefano Riccio (Dc) adds some detail both to the speech made by Meuccio Ruini, President of the Commission of 75 on 6th February, 1947 and to the ensuing discussions on the *originarietà* of the Church's juridical organisation: "È riconosciuta la sovranità, oltre l'indipendenza della Chiesa: è rinnegato cioè, sia un giurisdizionalismo separatista, sia un separatismo giusnaturalista, mentre è affermata la *originarietà* dell'ordinamento giuridico della Chiesa."³⁹⁵ He thinks it would be particularly useful to remind the Assembly of the thoughts of Santi Romano, for whom the *originarietà* of the Church's juridical system, becomes the basis for the concept of the plurality of juridical systems.

Ed invero la differenza tra lo Stato e la Chiesa è che mentre il primo è una società, giuridicamente e politicamente organizzata su base territoriale, la seconda è una società giuridicamente e politicamente organizzata su base non territoriale. La *originarietà* dell'ordinamento giuridico della Chiesa significa che esso è a sè, distinto ed indipendente. La Chiesa ha una potestà normativa, che non le deriva dallo Stato, ma che è ad essa propria ed originaria, in quanto essa si presenta come una istituzione organizzata e che ha conseguita una giuridica unità, la quale oltrepassa i confini dello Stato. I caratteri della indipendenza e sovranità, fissati cumulativamente, indicano precisamente la *originarietà* di quest'ordinamento, cioè l'asseità, nel senso che essa è un ordinamento per sé stante, il cui fondamento non deriva dal riconoscimento di un altro ordinamento. La sovranità della Chiesa, che non è legato al territorio, ma è un dominio spirituale, e, perciò, supera ed abbraccia il territorio del singolo Stato, è una realtà storico-sociale, ormai non più disconoscibile.³⁹⁶

³⁹⁴ Ibid.

³⁹⁵ CRAC, vol. 1, p. 387. Riccio then quotes four important sources, Catholic and non-Catholic, on the subject: Leo XIII in his encyclical *Immortale Dei* in C. Carlen, *The Papal Encyclicals (Vol. II: 1878-1903)* Raleigh: The Pierian Press, 1990; S. Romano, *L'ordinamento giuridico*, Sansoni, 1946; P. Gismondi, *Il nuovo giurisdizionalismo italiano*, Milano: Giuffrè, 1946 and L. De Luca, *Considerazioni sull'autonomia e la pubblicità della Chiesa nel diritto italiano*, Milano: Giuffrè, 1946.

³⁹⁶ But it is only a spiritual sovereignty: not an economic, social or political one.

... Stato e Chiesa agiscono in rapporto agli stessi soggetti e sullo stesso territorio; onde questa reciproca sovranità è opportuno riconoscere e stabilire, ad evitare equivoche interpretazioni della volontà costituzionale.³⁹⁷

Riccio's account is a concise and clear statement of the theory of *originarietà*, and in some ways compelling. As we shall see, however, his argument that a clear understanding that the Church exercises its sovereignty in the spiritual domain would avoid conflict and ambiguity is, to say the least, optimistic. Spiritual sovereignty is not exercised in a vacuum, and ecclesiastical sanctions against Catholics (and priests in particular) who transgress its doctrinal or moral teachings inevitably raise issues in relation to civil rights, which are the proper domain of the state.

There were others, however, who also saw problems with the wording of clause 1, and specifically with the phrase “nel proprio ordine”. Cevolotto, for example, took the opportunity to attempt to partially remedy his defeat in the Subcommittee, arguing that the wording was imprecise to the point of being meaningless. A better wording would be “nel proprio ordinamento giuridico”. In Subcommittee 1 he had debated this phrase at length with Dossetti: he says that Dossetti wanted to affirm that “l'ordinamento giuridico della Chiesa è un ordinamento originario e primario.” He himself had refrained from using this phrase because he felt it would not be understood by the population at large and thus would not have been suitable for a constitution which must be both technically precise but also clear and accessible to everyone. Dossetti, however, wanted to state explicitly that the “ordinamento giuridico della Chiesa è un ordinamento giuridico primario e originario, cioè non subordinato e non derivante dall'ordinamento statale.”³⁹⁸ This, says Cevolotto, would be acceptable were it not for the wording which is not appropriate, and the fact that a constitution “non è chiamata a dire che cosa è e come è un determinato ordinamento giuridico, ma ad ammetterlo o non ammetterlo, e a trarne le conseguenze costituzionali.”³⁹⁹

Throughout the debates in both the Subcommittee and in the Constituent Assembly, Dossetti put forward arguments of an extremely complex, technical and more often than not, theological and juridical nature. Such arguments had the effect of slowing down proceedings and, at times, causing confusion. The following intervention in the Assembly was typical: Dossetti says that Cevolotto and

³⁹⁷ CRAC, vol. 1, pp. 387-8.

³⁹⁸ Ibid., p. 538.

³⁹⁹ Ibid.

Calamandrei have made the fundamental error of considering the first and second clauses of article 5 (draft) as a single entity, when they actually deal with two distinct principles:

Il primo riguarda la qualificazione delle due società, lo Stato e la Chiesa, ciascuna considerata in se stessa, cioè riguarda . . . la considerazione, al di fuori di ogni contatto, statica; il secondo riguarda essenzialmente i loro rapporti e quindi la loro considerazione dinamica.⁴⁰⁰

The first clause, he says, originated from an overtly technical proposal he had made in the course of the discussions at subcommission level (“Lo Stato riconosce . . . come originari l’ordinamento giuridico internazionale, gli ordinamenti degli altri stati e l’ordinamento della Chiesa”) which was subsequently amended by Togliatti into the current clause, which was more readily understandable and satisfied demands for a more politically-orientated wording. But Dossetti insists that any interpretation of the clause should, for reasons of clarity, be undertaken from the perspective of his original, purely technical, proposal. In fact, he claims, recognising the *originarietà* of the Catholic Church’s juridical system is tantamount to recognising its independence and sovereignty, and recognising its independence is likewise tantamount to recognising the *originarietà* of its system of canon law. He then highlights the difference between *ordinamenti originari* and *ordinamenti derivati*, arguing that none of the previous speakers have made the distinction between the two concepts with the necessary precision: an *ordinamento originario* is any institution which does not derive its own justification nor its own foundation from an other institution; whereas an *ordinamento derivato* – as the name suggests – is any institution whose juridical foundation is derived from a superior institution.

Dossetti insists that it is not enough to accept the plurality of juridical systems: one must also recognise that the Church’s juridical system is ‘originary’ and thus sovereign in its own sphere. Calamandrei’s objections are also nullified: he argued that the first clause was unsuitable for a Constitution which should be monologic in nature, and would be more aptly located in the dialogic context of a treaty. Dossetti argues that in a constitution the State cannot speak of other originary systems (of government and law) without acknowledging both its own and the other’s sovereignty and originary status.⁴⁰¹

⁴⁰⁰ Ibid., p. 547.

⁴⁰¹ CRAC, vol. 1, p. 549. There is one obvious point not yet made in the debate: why was it necessary to even mention other institutions – whether originary or not – in a document which had the sole

(ii) Sovereignty of Church and State

Subcommission 1

The issue of the sovereignty of Church and State revolved around the suitability and necessity of including a reference to such sovereignty in the Constitution. Indeed, the distinguished jurist Calamandrei thinks that such a serious issue as sovereignty should be debated in the full Constituent Assembly, not in the Subcommission. As we have seen, he considers that the article formulated by the First Subcommission is more suited to a treaty than to a Constitution, arguing that, in a constitution, the only sovereignty expressed should be the State's, and indeed admitting another body into the constitutional framework is such a new and unusual juridical procedure that it would be inappropriate to deal with such a matter in the current Assembly. He doesn't deny that the Church has an autonomous juridical structure with its own sovereignty, but says that there are many other such juridical structures, such as all other foreign states. He argues that it would be pointless to state in the Constitution, for example, that the Italian State and the USA are each in their own spheres independent and sovereign. For reasons of juridical correctness he thus states that he will not approve the clause.⁴⁰² The socialist Lelio Basso considers that the independence and sovereignty of the state should be obvious in a constitution, although it is right to recognise the Church's independence within the State.⁴⁰³ Indeed, Togliatti claims that the Catholic Church, even if territorially contained within Italy, operates on a different level to a nation and the proposal is thus not juridically defective. He examines alternative scenarios: the State controlling ecclesiastical laws and the running of the Church; or what happened in France after the 'Combes law' when religious organisations had to satisfy certain criteria laid down by the State before they were given recognition. This cannot happen in Italy, he says, "perché significherebbe aprire in Italia una lacerazione religiosa, con una conseguente lotta che potrebbe sconvolgere tutta la società italiana e mettere in serio pericolo la democrazia."⁴⁰⁴

However, Gustavo Fabbri (Gruppo parlamentare misto) cannot accept the clause in its original form because he cannot accept the concept of the Church's sovereignty. He says that precisely because it is Catholic it would seek to control the

purpose of outlining the legal and moral duties of the State and the public duties of the citizens living within that State? See also Section A3 (ii) of this thesis.

⁴⁰² CRAC, vol. 6, pp. 147-8.

⁴⁰³ Ibid., p. 148.

⁴⁰⁴ Ibid.

life of Italians thus conflicting with the sovereignty of the State inasmuch as such an invasion by the Church would conflict with the liberty of non-Catholics.⁴⁰⁵

It is noticeable in the debates in the Subcommittee that the non-Communist *laici*, such as Calamandrei and Fabbri, although for different reasons, are less prone to compromise with the Catholics on the issue of expressing the independence and sovereignty of the Church in the Constitution. And whilst the socialists, led by Basso, are willing to accept such a declaration, it is clear that they are not doing so for quite the same reasons as Togliatti, who gives far greater weight to the Catholic argument throughout the debates of the need to maintain the *pace religiosa*. Whereas the socialists and the *azionisti* (Calamandrei was associated with the latter) regarded Catholic comments of this kind as little more than a veiled threat, and although Togliatti may well have also seen them in this light, he was far more anxious to quash the image of the Pci as an anti-Catholic party. Togliatti's leadership of the Communists in the Subcommittee and the Assembly must, moreover, be seen in the overall context of the Pci's appeal to the masses in a Catholic country, and in the context of the long term hegemonizing strategy of the party's forthcoming programme in the 'Via italiana al socialismo'.

Constituent Assembly

Doubts were expressed by Pietro Mancini (Psi) as to the need for the State to explicitly refer to its own sovereign status. He pointed out that

Stato e Chiesa sono due ordinamenti giuridici sovrani ed indipendenti nella loro sfera giurisdizionale e territoriale. Libera Chiesa nello Stato sovrano. . . . Nella Costituzione lo Stato italiano non aveva bisogno di affermare la sua sovranità e la sua indipendenza. Lo Stato italiano è espressione diretta del potere sovrano del popolo. È lo stato di fatto che diventa stato di diritto. Onde la sua sovranità e la sua indipendenza sono attributi sacri ed inviolabili. Sono presupposti, che non debbono essere formulati, perché senza di essi, non si comprende la stessa Costituzione . . . Ma il richiamo è avvenuto per ben altra ragione. Per rilevare la sovranità e l'indipendenza della Chiesa e metterla sullo stesso piano della sovranità e l'indipendenza dello Stato. Orbene, lo Stato può riconoscere l'indipendenza della Chiesa; ma non può riconoscere la sua sovranità quando si muove nella stessa giurisdizione territoriale. La Chiesa fuori del nostro territorio è un ordinamento sovrano come sono sovrani tutti gli Stati esteri ed essa è uno Stato estero; perché possiede il suo territorio, pur se ristretto e simbolico, ed i suoi ambasciatori, cioè i suoi 'Nunzi'.⁴⁰⁶

⁴⁰⁵ Ibid.

⁴⁰⁶ CRAC, vol. 1, p. 474.

Mancini, in the course of his speech, in referring to the ‘ben altra ragione’ for inserting references to the Church’s independence and sovereignty, was in effect voicing the sentiments of most of the *laici*. Very few were in principle opposed to granting this sovereignty and independence in its own sphere, but many insisted that declarations concerning the mutual recognition of sovereignty were better suited to an international treaty than to a national constitution. Calamandrei addresses the issue by clarifying a fundamental point regarding the wording of this first clause. He says the first thing that strikes the jurist is: who is speaking here? Is it the State or the Church? Is it one or two voices? He can understand the subject of the Constitution, the State, recognising the sovereignty of the Church, but for the Church to simultaneously recognise the sovereignty of the State, something which is assumed by the fact of it being a State Constitution, is, he says, incongruous to a jurist. Orazio Condorelli (Bnl), on the other hand, believes that the sovereignty and independence of the Church is non-negotiable and a fundamental aspect of its existence: “Qui la sovranità vuol dire . . . potestà originaria propria, connaturata, onde il diritto canonico non è diritto perché lo riconosce lo Stato, ma è diritto perché emana da un potere sovrano, che è la Chiesa.”⁴⁰⁷ In a subsequent debate, Calamandrei develops this argument adding weight to what others before him like Orlando, Croce, Nitti, Labriola and others have said *ad infinitum*, that such a clause belongs in an international treaty between two sovereign entities in order that they recognise each other’s sovereignty.

La Costituzione, quella che noi stiamo discutendo, è l’atto di una sola sovranità: del popolo italiano, della Repubblica italiana. Qui parla soltanto il popolo italiano, la Repubblica. La Chiesa qui, in questa sede, in questo momento, non ha *aperitio oris*. Non c’è nessuno che la rappresenti; né credo che pensino di rappresentarla in questa sede gli amici democristiani, i quali sono stati mandati qui per rappresentare il popolo e non per rappresentare la Chiesa . . . E se pretendessero di poter parlare anche in nome della Chiesa, pretenderebbero in questo momento di compiere quello che giuridicamente è un assurdo ed un *monstrum*, cioè . . . un contratto con se stessi. Lo Stato è sovrano e non c’è bisogno che la Chiesa ne riconosca la sovranità. È vero . . . che ormai è comunemente ammessa la teoria della pluralità degli ordinamenti giuridici.⁴⁰⁸

Calamandrei adds that the old theory by which all laws emanate from the state has been superseded:

⁴⁰⁷ Ibid., p. 447.

⁴⁰⁸ Ibid., p. 514.

Ma questa teoria della pluralità degli ordinamenti giuridici non ha niente a che vedere con questo articolo 5; perché, quando, come qui, ci si trova nel cuore di un ordinamento giuridico, cioè nell'interno di questa Assemblea Costituente, dalla quale deve scaturire la legge fondamentale dell'ordinamento giuridico di cui noi siamo i costruttori, allora noi dobbiamo darci cura soltanto di questo ordinamento giuridico, di cui siamo al centro, e soltanto in nome di esso possiamo creare le nostre leggi.⁴⁰⁹

He puts a rhetorical question to the Assembly which produces 'hilarity and lively comments from the centre parties': What would they think of an article stating:

"L'Italia e la Francia sono ciascuno, nel proprio ordine, indipendenti e sovrani"?

Dossetti's response is both dismissive and uncharacteristically concise:

Calamandrei's point is "quasi piuttosto fiorentinamente scherzosa che obiezione seria" and, furthermore, no one doubts the authenticity of the independence and sovereignty of France, but in Italian political circles at least, there are those who doubt, or who pretend to doubt, that of the Church.⁴¹⁰ Calamandrei points out that he put the same question to the Commission of 75, to which Togliatti, once more defending the Catholics, replied:

Un articolo di questa natura sarebbe inutile, sarebbe assurdo, perché questi due ordinamenti, l'Italia e la Francia, sono entrambi ordinamenti dello stesso ordine e sarebbe superfluo e vano questa specie di scambio di cortesie, che consisterebbe nel riconoscere reciprocamente una sovranità inerente a diversità di ben distinti territori nazionali. Ma quando si tratta di Stato e Chiesa, si tratta di due ordinamenti che vivono in due diversi ordini, ed appunto perché sono due ordinamenti su piani diversi questo riconoscimento reciproco di sovranità diventa necessario.⁴¹¹

Calamandrei is not persuaded by Togliatti's argument, but does accept that there is common ground between Church and State which must be negotiated on a political level. He repeats that clauses such as the first in article 5 are nonsensical

perché quando si arriverà su un terreno pratico in cui nascerà il conflitto ed in cui si troveranno nei due ordinamenti norme divergenti e contrastanti, allora si tratterà di stabilire se devono prevalere gli ordinamenti dello Stato, la cui sovranità è stata riconosciuta dalla Chiesa, o se devono prevalere gli ordinamenti della Chiesa, la cui sovranità è stata riconosciuta dallo Stato!⁴¹²

He is totally against this clause which he claims has been put there to make it appear as if the problem has been resolved, when in reality it remains unresolved.

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid., p. 549

⁴¹¹ Ibid., p. 514.

⁴¹² Ibid., p. 515.

Carlo Bassano (Pdl) argues that the subject of the constitution is the state, and that in such a document the state is not authorised to speak on behalf of another institution such as the Church. He asks why the Church needs the Italian State to recognise its spiritual sovereignty, when it already achieves such recognition through international law? Moreover, this recognition is referred to specifically in article two of the Lateran Treaty. He also cites articles 1, 3, 6, 7, 8, 9, 11 and 12 of the Law of Guarantees as proof that the Italian State has always respected the independence of the Pontiff and the sovereignty of the Holy See.⁴¹³ He argues that if Catholic deputies want to make recognition of the spiritual sovereignty of the Church explicit, it should be done in accordance with the recognition given to the Italian State in the Lateran Treaty, that is, in terms laid down by international law.

Amendments

In an attempt to put all churches on an equal footing in the Constitution, the Republican, Ugo Della Seta, presented the following amendment to article 5:

Lo Stato e le singole Chiese sono, ciascuno nel proprio ordine interno,
indipendenti e sovrani.
I rapporti tra lo Stato e ogni singola Chiesa sono disciplinati per legge.⁴¹⁴

He says that a people who are about to bestow on themselves their own republican Constitution should not feel the need to enshrine in that Constitution the sovereignty of the State; likewise, those with a higher moral and civil education and a higher level of political maturity should not be made to feel obliged to enshrine in that Constitution the independence and sovereignty of the Church.⁴¹⁵

Edgardo Lami Starnuti (Psli) also presented the following amendment to draft article 5:

La Repubblica riconosce la Chiesa cattolica, nel suo ordine, indipendente e
sovrana.⁴¹⁶

He acknowledges that article 5 was conceived with the best of intentions – to avoid reopening religious conflict in Italy. However, he doubts whether this is, in fact, possible since the authors of the clause are attempting to resolve a political fracas,

⁴¹³ Ibid., p. 535. See also see Legge 13 Maggio 1871 (*Legge delle Guarentigie*), No. 214 in *Raccolta Ufficiale delle Leggi e dei Decreti del Regno d'Italia* (a cura del) Ministero per la Giustizia, Rome, pp. 1015-1022.

⁴¹⁴ CRAC, vol. 1, p. 614.

⁴¹⁵ Ibid., pp. 614-5.

⁴¹⁶ Ibid., p. 619.

which he suggests is non-existent, and would in reality create religious turmoil in the country. His amendment reduces the duplicate affirmation of sovereignty and independence to a singular affirmation (the State recognising the Church as such), since it is the State that is the voice of the Constitution, and to declare its own independence in a document which by its very existence deems the State to be sovereign and independent seems to Lami Starnuti to be a nonsense. He makes the observation that all the parties have agreed to compromise over the delicate issue of religious freedom and not disturb the *pace religiosa*: “La prima parte del nostro emendamento risponde in certo senso a quella che è la sfida della Democrazia cristiana al pensiero laico e libero della democrazia italiana.”⁴¹⁷ Clearly, Starnuti regards the badly defined notion of *pace religiosa* as an ill-conceived, unnecessary and provocative criticism of the civic and pluralist credentials of the *laici*.

(iii) Privilege of having the Vatican in Italy

Subcommission 1

More than most of the other Dc deputies, Giorgio La Pira was keen to promote the Church as a loyal and able supporter of the State, in a perfect position to work with the State in the government of Italy.⁴¹⁸ He says,

quando la Chiesa vede uno spirito democratico di sincerità, di realtà, di concretezza storica nei suoi confronti, essa allora viene incontro a tutte le legittime aspirazioni di questa democrazia: noi avremo in essa una preziosa collaboratrice. Perché devo ricordarvi una cosa che non possiamo dimenticare, che la Chiesa cattolica ha in Roma il centro mistico e giuridico di una comunità internazionale che si estende da un polo all'altro: essa ha nell'Italia, in Roma, il suo centro propulsore, destinato ad imprimere il moto al corpo mistico della Chiesa. Perché non volete tener conto di questa condizione storica ed avere questa sensibilità politica nei confronti della Chiesa cattolica? Credo ormai che una quantità di pregiudizi siano venuti meno. La Chiesa – che nella sua struttura interiore è la comunione dei santi, e che nella sua struttura esterna costituisce una magnifica e universale struttura giuridica – può fare e fa tanto bene, anche politicamente, pel nostro Paese.⁴¹⁹

Stefano Jacini (Dc) uses the Roman Question to highlight the importance of the presence of the Catholic Church in Rome:

⁴¹⁷ Ibid., p. 620.

⁴¹⁸ This seems to be a generalised version of De Gasperi's 'diarchy' proposals which he proposed in his speech to the Assembly. See Section B2 b) (iv) of this thesis.

⁴¹⁹ CRAC, vol. 1, p. 324. La Pira closes his speech with a series of biblical references and a final invocation calling for the blessing of God and the Immaculate Virgin on their Constitution. To the annoyance, but occasionally indulgent amusement, and even affection, of the parties of the left, this is how he ends all of his speeches to the Assembly.

L'Italia, nel suo millenario processo di unificazione, si era sempre trovata davanti a questo ostacolo, di uno Stato, situato al centro della penisola e diverso da tutti gli altri, perché appannaggio temporale di una potenza spirituale, base nazionale di un potere internazionale, il quale potere, a sua volta, aveva per altri aspetti, influenza su tutto il resto della penisola. Questo fatto . . . la polemica anticlericale laicista ce lo ha dipinto sempre come una tremenda disgrazia per il nostro Paese. Noi cattolici pensiamo che invece ci fosse un grande privilegio ed onore quello di avere, in casa nostra, la sede del più alto potere del mondo . . . Ma, comunque lo si volesse discutere e giudicare, il fatto esisteva e rappresentava un ostacolo alla compiuta unità territoriale del Paese . . .⁴²⁰

These comments, by La Pira and Jacini, are important as an illustration of the sentiments shared by many Catholics, in relation to the sense of privilege enjoyed by the Italian peninsula at having what they regard as the centre of Christendom housed within their boundaries. This explains, to some extent, the inability of the more devout, like La Pira, to understand the doubts, reservations and even fears of the *laici* in relation to granting a position of privilege to the Church in their country. It can also help to explain the determination of other Catholic *costituenti* to ensure, despite the clear jurisprudential anomalies, that declarations concerning the sovereignty of the Church should be inserted into the Constitution. One must also bear in mind that despite the clear evidence of a willingness to collaborate and to compromise on the part of the Communists, many Catholics did not trust their motives.

(iv) Delineating the legislative powers of Church and State

Constituent Assembly

Taking a similar, juridical stance to Calamandrei, Ugo Della Seta (Pri) argues for greater clarity in the wording of the draft Constitution. He cites a number of examples including article 5 on Church/State relations. He argues that clause one needs more clarification: does 'ciascuno nel proprio ordine' refer to internal or external spheres? If it refers to their external spheres, then "porterebbe uno di questi poteri ad invadere illegittimamente la sfera dell'altro?". He feels it needs a more precise construction, such as "ciascuni nel proprio ordine *interno*."⁴²¹

The overlap of the legislative powers of Church and State is addressed more fully by another republican Francesco De Vita. He believes that the first clause,

⁴²⁰ Ibid., p. 417.

⁴²¹ Ibid., p. 178.

così com'è formulato, anziché assicurare la tanto desiderata pace religiosa, potrebbe portare ad aperti contrasti. Con questo comma, infatti, non si vuole affermare il principio di separazione fra Stato e Chiesa. Lo scopo, evidentemente, è un altro: si vuole non soltanto affermare il principio del riconoscimento dei diritti e dei poteri temporali della Chiesa come Santa Sede – e per ciò ente con personalità internazionale perfetta – ma anche dei diritti e poteri che si estendono oltre i limiti della Città del Vaticano. Sorge allora spontanea la domanda: chi determina i limiti dell'ordinamento giuridico dello Stato e della Chiesa, se non lo Stato e la Chiesa medesimi, quali enti sovrani?⁴²²

He points out that in some areas, such as matrimony, the Church claims sole jurisdiction for itself. But, he asks, should the State benignly accept such a claim?

He thinks not, and moreover:

Possono Stato e Chiesa legiferare entrambi in questa e in altre materie senza il pericolo di conflitti? Si potrebbe obiettare che, ai sensi del successivo comma dello stesso articolo, il collegamento fra Stato e Chiesa deve essere concordatario. Ma, a mio avviso, l'obiezione non regge, perché col primo comma si riconosce la piena sovranità della Chiesa anche nei rapporti esterni e nel secondo comma è soltanto un impegno unilaterale dello Stato.⁴²³

By the time of the new Republic, ideas such as those of the *laico* Francesco Scaduto, who claimed that the Church's juridical system was not compatible with that of the State, but was the statute of a mere association, had long been superseded. Indeed Cevolotto points out that Santi Romano's theory of the plurality of juridical systems was now the accepted norm. He accepts that the *originarietà* and autonomy of the Church's juridical system is a notion that has been unanimously and unconditionally accepted in Italian juridical circles. But he considers it necessary to add a proviso: "che agli ordinamenti statuali non possono appartenere norme che non derivano, almeno in modo mediato, dalla volontà dello Stato."⁴²⁴ He asks how it is possible that the Church's legal system, albeit independent and 'originary', can acquire juridical relevance through the State's legal system, when his party affirms the principle that the State is the only source of law? Like Calamandrei before him, he cites Mario Falco's formula: "Le leggi canoniche hanno effetti civili solo in quanto le leggi dello Stato glieli attribuiscono e nei limiti di tale attribuzione."⁴²⁵ So having accepted the *originarietà* of the Church's legal system, the next problem is to delineate to what extent that system can encroach on the State's legal system. He

⁴²² Ibid., p.361.

⁴²³ Ibid., pp. 361-2.

⁴²⁴ Ibid., p. 538.

⁴²⁵ Ibid.

suggests that Church laws should only have force where State laws specifically allow this. This question is bound up with the issue of the sovereignty of each institution, an issue which arose with the creation of the Concordat. To illustrate the Church's position on State laws that impinge on areas of legislature covered by the Concordat, Cevolotto cites the following section from an oft quoted letter sent by Pius XI to Cardinal Gasparri:

Nel Concordato sono in presenza, se non due Stati, certissimamente due sovranità pienamente tali, cioè pienamente perfette, ciascuna nel suo ordine, ordine necessariamente determinato dal rispettivo fine. Ove è appena d'uopo soggiungere che l'oggettiva dignità dei fini determina non meno oggettivamente e necessariamente l'assoluta superiorità della Chiesa.⁴²⁶

Bearing in mind this claim by Pius XI, Cevolotto then succinctly outlines the problem: "Come risolvere il problema della sovranità dell'ordinamento giuridico della Chiesa, che incide e insiste sullo stesso territorio e sugli stessi soggetti della sovranità dello Stato?"⁴²⁷ He suggests that the jurists writing for *Civiltà Cattolica* have found themselves in an embarrassing position due to the difficulty of this issue, but have resolved it by claiming that the Church's juridical system is external (i.e. independent) of the State's system, and thus 'any overlap or interferences' (to use Cevolotto's words) must be regulated by means of accords. In other words, he says, Italians would in practice be considered as having dual citizenship – Vatican and Italian. Moreover, the complexity of each institution's juridical system would, according to certain *Civiltà Cattolica* jurists like Padre Salvatore Lener (SJ), necessitate both a different definition of the Church's sovereignty and, due to the coexistence of the two sovereign juridical systems, and the Church's claim to 'assoluta superiorità', inevitable limitations of State sovereignty. Far from being an external juridical system, it would then impinge on the same people and the same legal matters. This gives rise to the main issue: the overlapping areas of jurisdiction such as matrimony and education where even the Catholic jurists admit that a further diminution of the State's powers is the only way the problem can be resolved to their satisfaction.

In fact, Cevolotto shows that Padre Lener's interpretation of the Church's juridical system as being external is a nonsense. Lener, he says, subscribes to the theory of the plurality of juridical systems (i.e. that they can co-exist). But the theory

⁴²⁶ Ibid., p. 539. See F. Pacelli, *Diario della Conciliazione*, App. XLII, pp. 549-557 for the full letter.

⁴²⁷ CRAC, vol. 1, p. 539.

considers the Church's juridical system as internal, and thus equivalent to the State's system. Consequently, the Church's claim to sovereignty suggests that it must have precedence over any areas of jurisdiction considered to be its own, even if they coincide with matters covered by the State's juridical system. Any such diminution of the State's sovereignty is dangerous and politically unacceptable to Cevolotto and his party. He is happy for the Church's internal juridical system to remain valid, but only to the extent that it be recognised and accepted by the State. To this end he proposed an amendment to article 5 (draft): "Lo Stato riconosce l'indipendenza della Chiesa cattolica nel suo ordinamento giuridico interno."⁴²⁸

In an attempt to show how the Church is autonomous, having no superior power to answer to, Dossetti contrasts its unique situation, at the spiritual level, to that of the regions and communes of Italy whose powers all derive from the central authorities in Rome. Thus, the Church could be said to enjoy a primary autonomy, in other words, true independence and sovereignty. He argues that whereas the fundamental element of the sovereignty of the State is temporal, political and territorial, the sovereign status of the Church is essentially non-territorial, but rather spiritual and eternal. He points out that since the teachings of Francesco Ruffini at the University of Turin prior to the first World War, all of Italian public law has been constructed around the concept of the Church's autonomy being primary and originary. He says that all the experts in ecclesiastical law, whether they be Catholic or non-Catholic, agree with this concept and that if their teaching were applied, then all the objections to the first clause of Article 5 would be more than adequately answered.⁴²⁹ Thus he claims that the objections of Orlando and Cevolotto – from the moment that the principle of the plurality of juridical systems was accepted, the declaration of the Church's sovereignty was superfluous – are no longer valid.

Church and State, in their capacities as *ordinamenti originari*, should, according to Dossetti, negotiate any overlapping areas of law bilaterally. He considers that the subject should no longer be discussed within the old politico-philosophical parameters of *laicismo* and *laicità* or the confessional State. He thinks it is time to introduce a new framework for the discussion, that of precise juridical formulae and to use some of the more refined concepts of modern theory of law.⁴³⁰ The concept of the *autonomia originaria* of both the Church and the State is,

⁴²⁸ Ibid., p. 540.

⁴²⁹ Ibid., p. 548.

⁴³⁰ Ibid., p. 550.

according to Dossetti, first of all, the essential pre-requisite for any discussion of relations between the two entities since it demarcates their juridical boundaries far better than any discussion based on State *laicità*. Secondly, it unequivocally creates parity between the two institutions: Dossetti uses this as an argument against Cevolotto's claim that canon law assumes superiority over civil law. Dossetti claims that the very fact of the parity and independence of each institution as an originary entity negates the possibility of one interfering in the jurisdiction of the other.⁴³¹ He argues that it makes absolutely necessary bilateral negotiations in areas where both institutions have the same interests. It also renders impossible any unilateral decision by one or other of the institutions on any such area. If such a decision were to be taken it would put the relationship between the two bodies immediately in jeopardy, and would mean that the body taking the decision would be effectively claiming juridical superiority over the other and denying or negating the *originarietà* of the other. Thus bilateral controls (ironically, he uses the word 'concordataria'), Dossetti claims, would not result in confusion between the two institutions, in any limitation of the sovereignty of either one, nor in any interference of one in the affairs of the other.⁴³² "Qui, onorevole colleghi, nel riconoscimento della necessità di una disciplina bilaterale delle materie di comune interesse, è la vera separazione tra Chiesa e Stato, la vera indipendenza reciproca, la vera laicità, la vera libertà di coscienza."⁴³³ This 'true' freedom of conscience, he claims, can only emerge from such a system, where the State can neither impose its will in spiritual matters nor attempt to control the spiritual will of the individual, but must discuss any matters affecting the spiritual well-being of the nation in accordance with the bilateral framework established by the terms of article 5. As many of the *laici* in the Assembly could see, Dossetti presented an over-optimistic picture of the possibility of reconciling potential conflict. In the sphere of state legislation, for example, does the Church regard such legislation permitting divorce or abortion as 'imposing its [i.e. the state's] will in spiritual matters'? It certainly did at the time, yet can the state accept being dictated to in such matters by the Church? The state is required to legislate for all its citizens, and not discriminate on religious grounds.

⁴³¹ This was, of course, in practice absolute nonsense since many of the State laws on religious freedom had been directly influenced by Vatican pressure to reduce the operational scope of the minority religions. And the laws, passed under the Fascist regime, remained on the Statute books well into the 20th century, with the post war Dc government making no attempt to update or modify them, and in some instances, actually increasing police powers of enforcement of the laws. See section C(v)a) of this thesis.

⁴³² CRAC, vol. 1, p. 551.

⁴³³ Ibid., p. 552

(v) Separation of the powers of Church and State

Constituent Assembly

The issue of separation of Church and State was seen by Jacini (Dc) in terms of the Concordat: the question was whether a regime of concordatory relations was preferable “alla separazione amichevole tra Chiesa e Stato, alla neutralità assoluta dello Stato, alla religione considerata come cosa privata.”⁴³⁴

His personal view on the issue is rather surprising, and does not reflect the view of his party at all, something he is keen to point out:

Posso arrivare a concedere, in linea teorica e dottrinale, la superiorità d’una amichevole e rispettosa separazione dei poteri, di una libertà di coscienza non garantita né vincolata da alcun accordo fra Chiesa e Stato; di una Chiesa inquadrata semplicemente nel diritto comune; posso ritenere che ciò rappresenti qualche cosa di desiderabile, anche perché offrirebbe alla Chiesa stessa enormi possibilità di sviluppo. Ricordo a questo proposito di avere conosciuto ai tempi della mia gioventù uno dei nostri più illustri giurisdizionalisti, il senatore Carlo Piola Daverio; ottimo cattolico, ma giurisdizionalista feroce, egli temeva una cosa sola: che la Chiesa in Italia venisse trattata come cosa privata; perché, diceva, da quel momento, la Chiesa sarà onnipotente e ci schiaccerà tutti.⁴³⁵

This, he says, is a perfectly valid opinion. However, in the Western world and in Italy in particular, it is not possible to present the problem in these terms:

Non vi è mai stata, non vi è, e presumibilmente non vi sarà mai, la possibilità di separazione assoluta tra i due poteri, in un Paese dell’occidente europeo e in Italia in modo speciale . . . perché l’europeo non è divisibile. La Chiesa si può combattere, la Chiesa si può perseguire; con la Chiesa si può patteggiare; ma la Chiesa non si può ignorare; è questo un dato di fatto che diciannove secoli di storia confermano.⁴³⁶

With regard to Church/State relations, and in response to arguments of the type proffered by Jacini, Condorelli says,

Noi abbiamo oggi dei casi di separazione sostanziale e di unione meramente formale; separazione sostanziale, perché lo Stato è un’entità laica; formale, perché si dà forma giuridica, attraverso il Concordato, a certi rapporti intercorrenti fra Stato e Chiesa. Lo Stato italiano è veramente questo: è uno Stato sostanzialmente separato dalla Chiesa, formalmente coordinato per regolare le materie comuni.⁴³⁷

⁴³⁴ CRAC, vol. 1, p. 418.

⁴³⁵ Ibid.

⁴³⁶ Ibid., pp. 418-9.

⁴³⁷ Ibid., p. 449.

Pietro Mancini (Psi) suggests that Condorelli was wrong when he said that

dal punto di vista sostanziale ‘lo Stato è separato dalla Chiesa, mentre dal punto di vista formale lo Stato concorda con la Chiesa’. Lo Stato è sovrano e indipendente nella sua giurisdizione territoriale e non può concordare con nessuno; perché in politica la forma plasma la sostanza.⁴³⁸

In all probability, Condorelli and Mancini are working with slightly different conceptions of ‘formale’. It is clear from Condorelli’s use of the term that he interprets it as a formal (i.e. juridical) negotiated settlement of the terms of the relations. Mancini, on the other hand, clearly uses the term in the sense that the form shapes the substance, and seems to be using ‘concordare’ to mean coming to an agreement on matters which are the state’s prerogative alone. Otherwise, his statement that the state “non può concordare con nessuno” would be absurd.

What is perhaps more interesting is Stefano Jacini’s comments on the Church as a reality “che diciannove secoli di storia confermano.” Whereas most Catholic references in the debates to the Church as a reality which cannot be ignored are in support of the idea that it is the religion of the majority of the people, and therefore deserves special consideration, Jacini, approaching it from the perspective of *giurisdizionalismo*, is anxious to guard against it as an overweening power which, in the absence of a concordatorial settlement, could well lead to a situation in which “la Chiesa sarà onnipotente e ci schiaccerà tutti.”

(vi) ‘Laicismo’, ‘laicità’ and the ‘stato laico’

Constituent Assembly

By the 1940’s many Catholics were beginning to accept the idea of *laicità*. Igino Giordani (Dc), attempting to explain this phenomenon quotes from

un documento che potrei chiamare ufficiale, un quaderno intitolato *La Chiesa*, edito dall’istituto cattolico di attività sociale, l’I.C.A.S., dove è detto: ‘Molti tuttavia sono tornati a richiedere lo Stato laico e nello stesso tempo assumono di volere assicurare il rispetto alla concordia. In questa concezione, lo Stato laico sarebbe quasi sinonimo che non subisce l’influenza della Chiesa, e se i suoi sostenitori fossero in buona fede, anche i cattolici potrebbero sostenere tale nuova coniazione di concetti.’⁴³⁹

Not all Dc deputies were as open to such controversial ideas as those harboured by Giordani. The integralist wing of the party (represented by the *dossettiani* among

⁴³⁸ Ibid., p. 474.

⁴³⁹ Ibid., p. 434.

others), not to mention the right wing, argued vehemently against the emergence of such ideas. La Pira, for example, firmly believed that man is intrinsically religious and that society and the state must reflect this ‘truth’:

Stiamo sempre alla precisazione dei concetti. Stato laico? Perché, vedete, per quel famoso principio che esiste sempre una base teoretica di tutte le cose, anche inconsapevolmente (perché l’azione è sempre diretta dall’idea) non esiste uno Stato agnostico: come si concepisce la realtà umana, come si concepisce la società, così si costruisce la vólta giuridica. Ora, se l’uomo ha questa orientazione intrinsecamente religiosa, senza una qualifica, ed allora, che significa Stato laico, se lo Stato è l’assetto giuridico della società? Se l’uomo ha questa intrinseca orientazione religiosa, se necessariamente questa intrinseca orientazione si esprime in comunità religiose, non esiste uno Stato laico. Esiste uno Stato rispettoso di questa orientazione religiosa e di queste formazioni religiose associate, in cui esso si esprime. Il termine è contraddittorio: non c’è Stato laico, non c’è Stato agnostico: non dobbiamo fare uno Stato confessionale, uno Stato, cioè, nel quale i diritti civili, politici ed economici derivino da una certa professione di fede; dobbiamo solo costruire uno Stato che rispetti questa intrinseca orientazione religiosa del singolo e della collettività e che ad essa conformi tutta la sua struttura giuridica e la sua struttura sociale.⁴⁴⁰

This last phrase begins promisingly with a call for the State to respect both individual and collective religious aspirations, but ends with the demand that the state should base all its legal and social structures on such aspirations.

At this point it is perhaps worth noting that the differences between Giordani and La Pira reflect the differences between two sides of a development in Catholic social thinking on the issue of the secular state (*stato laico*). Under the influence of thinkers like Jacques Maritain, Catholic intellectuals, mainly French at the time, had been developing the idea of a form of ‘secularisation’ as appropriate for Christian activists and politicians, in which there would be a clear separation, without any necessary hostility, between Church and State. Whereas *laicismo* remained the term to describe a militant secularism hostile to the state, *laicità* became the term to describe the correct separation of spheres without hostility.

Paradoxically, in the passages just quoted it is the socialist Rossi (also a Catholic) who came closest to describing a Catholic *laicità*:

Stato laico non vuol dire menomamente Stato ateo, e nemmeno, nel nostro modo di pensare, Stato areligioso. Essere laico . . . non significa limitare il pensiero umano all’orizzonte visibile, né interdire all’uomo l’idea della perpetua ricerca di Dio; significa rivendicare per la vita presente tutto lo sforzo degli uomini. Per noi laicità significa soltanto posizione dei valori

⁴⁴⁰ Ibid., p. 323.

religiosi nella loro sede naturale, senza la pericolosa e corruttrice contaminazione con i poteri dello Stato. Lasciatemi esprimere . . . il nostro esatto pensiero: noi non siamo atei e vogliamo professare pubblicamente la nostra fede in Dio; non siamo anarchici e vogliamo da onesti cittadini obbedire alle leggi dello Stato. Ciò che non vogliamo è una legge che ci obblighi a credere in Dio con la minaccia dei carabinieri (o con la perdita della nostra cattedra, se siamo sacerdoti) e un Dio che ci obblighi ad obbedire alle leggi con la minaccia dell'inferno. Noi contiamo, nella nostra proposta per la revisione dell'articolo 5, sulla completa e naturale solidarietà di tutta la sinistra e di quei liberali che non vogliono rinnegare la loro eredità.⁴⁴¹

(vii) Defining Church/State relations

Constituent Assembly

Defining the difference between Church and State is very difficult, according to

Giordani "Questi rapporti si possono risolvere o nell'accordo o nel disaccordo.

L'accordo favorisce quella pace spirituale, quella pace interiore che ha formato la grandezza dell'Italia."⁴⁴² He argues that Christianity was responsible for creating the distinction between Church and State; but was Christianity not responsible, from the time of Innocent III in the 13th century, for combining the two spheres and causing all subsequent problems of distinction?

Nei tempi più felici l'Italia aveva il popolo che godeva della pace religiosa e politica, cioè che non conosceva il contrasto fra le due attività. Il disaccordo invece danneggia tanto la Chiesa quanto lo Stato, perché se le due società sono indipendenti, come è detto giustamente nell'articolo 5 del progetto, però i loro rapporti vanno regolati tenendo presente che cosa significhi Chiesa e che cosa significhi Stato.⁴⁴³

He then introduces an element of confusion into the debate by saying that the Church is not the Vatican, the Curia or the bishops, important though they may be as the leaders of the Church. The Church is in fact, he says, the people. "Ciascuno di noi è cittadino ed è credente; in quanto cittadino, potremmo dire, è Stato; in quanto credente, è Chiesa, sicché siamo la stessa persona su cui si esercitano le due attività."⁴⁴⁴ He goes on to examine various scenarios, such as the State ignoring religions, persecuting religions and making religions subordinate to the State.

In Italy, Giordani sees the problem as simultaneously extremely simple and extremely difficult.

⁴⁴¹ Ibid., pp. 415-6.

⁴⁴² Ibid., p. 434.

⁴⁴³ Ibid., pp. 434-5.

⁴⁴⁴ Ibid., p. 435.

È estremamente facile . . . perché la grande maggioranza del popolo italiano è cattolica. Guardate i censimenti, anche anteriori al fascismo, e voi trovate il 97 per cento circa di cattolici. In democrazia la maggioranza significa qualcosa; cioè il popolo cattolico, che ha la maggioranza, vuole una sua pace religiosa, ha bisogno di una sua pace religiosa. Non concederla, non realizzarla, significa fare il danno di questa grande maggioranza.⁴⁴⁵

It is difficult and delicate because of the presence on the Italian peninsula of a city that is not only the political capital of Italy, but also the spiritual capital of the Catholic world. The presence of the mini-State of Vatican City within the political capital only compounds the problems of relations between the two States. The Pope, as head of this mini-State, is, says Giordani, considered by some as a foreign leader. But his position as Bishop of Rome and Primate of Italy along with the fact that most of the Popes prior to Pius XII have been Italian, and most indeed Roman, clearly makes him also an Italian national.

The events of 1870 opened up the divide between Church and State and, according to Giordani, caused a feeling of uneasiness among Catholics in Italy and worldwide. He recognises that the Law of Guarantees was an attempt to overcome this ‘uneasiness’, but as a unilateral document it could never really do this. Subsequent attempts by various governments to intervene in the affairs of the Vatican were not welcomed by the residing Pontiffs, “perché la Santa Sede voleva la risoluzione del problema dalla coscienza liberale del popolo italiano e tanto aspettò fino a che questo non avvenne e fu il popolo italiano che risolse la questione romana.”⁴⁴⁶

The lack of direction and indecisiveness of the arguments expounded by Giordani was not lost on the parties of the right. Gennaro Patricolo (Udn), was one of their number who was particularly irritated by them. He put forward the following amendment to clause 1:

“La Religione cattolica è la religione ufficiale della Repubblica italiana.”⁴⁴⁷

Patricolo is concerned about the way the Assembly is having to compromise on many of the articles of the Constitution and so his amendment, he says, is a true and honest reflection of the beliefs and wishes of his party “senza infingimenti e senza

⁴⁴⁵ Ibid., pp. 435-6.

⁴⁴⁶ Ibid., p. 436.

⁴⁴⁷ Ibid., p. 623.

ricorrere a vie tortuose.”⁴⁴⁸ The first clause of draft article 5, as it stands, is unacceptable because it could not prevent the conflicts between the State and the Catholic Church. He believes the amendment is essential in that it honestly reflects the religious situation in Italy and the feelings of the vast majority of Italians. To his satisfaction it has the effect of imposing the will of the Catholic majority on Church/State relations and simultaneously declaring Italy to be a confessional State.

(viii) Was clause 1 constitutionally sound?

Subcommission 1

From the outset of the debates, the cross-party consensus was that under no circumstances should there be religious confrontations in the Constituent Assembly. However, this did not preclude a great deal of concern felt by many parties of the Left with the tenor of clause 1 in its original form. Tommaso Perassi (Pri) agreed with some of Calamandrei’s observations on the unconstitutionality of such a clause, but particularly noted that the first clause has a juridical sense, suggesting there may exist a juridical level higher than both Church and State, which delineates their operational parameters. However, he makes it clear that such a norm exists neither here nor between other States. He adds that a formula such as that contained in the first clause can only be understood as a declaration between two equal bodies and as such should not appear in a State constitution.⁴⁴⁹ Lucifero (Bnl) cuts straight to the heart of the question (which Togliatti brought up in Subcommission 1): “che si tratta di una materia che *stricto jure* non è costituzionale.”⁴⁵⁰ Despite the weight of these arguments, however, Communist concessions to the much-vaunted *pace religiosa* ensured that it went through to the Constituent Assembly.

Constituent Assembly

Vittorio Emanuele Orlando (Udn) accepted the first clause of Article 5 (draft) from the legal perspective, but doubted the efficacy of including such a statement in the Constitution: “perché metterla nella Costituzione, dando luogo ad equivoci, ad interpretazioni, che potrebbero essere false ed erronee per chi non si è, direi,

⁴⁴⁸ Ibid.

⁴⁴⁹ CRAC, vol. 6, p. 148.

⁴⁵⁰ Ibid., p. 152. Togliatti only said that there was no need to mention the Church’s *originarietà* in the constitution.

specializzato in questo genere di studi?”⁴⁵¹ No new arguments on the topic were forthcoming in the Assembly.

The last word on the juridical appropriateness of this troublesome first clause should go to the political commentator Piero Agostino D’Avack who considers that

sotto qualunque aspetto si consideri, l’enunciazione contenuta in questa prima comma dell’articolo 7, o costituisce addirittura una formula priva di senso giuridico quale norma di una Carta costituzionale, o rappresenta quanto meno una direttiva generica astratta dello Stato priva di ogni giuridica rilevanza, o si risolve tutt’al più in una sostanziale ripetizione di un’altra norma costituzionale e quindi in una disposizione superflua ed inutile.⁴⁵²

Despite the huge body of arguments against this clause, both inside and outside the debating chamber, draft article 5, clause 1, was approved by Subcommission 1 and, with all amendments rejected by the Constituent Assembly, remained unaltered and became article 7 of the Italian Constitution in the following form: “Lo Stato e la Chiesa cattolica sono, ciascuno nel proprio ordine, indipendenti e sovrani.”

⁴⁵¹ CRAC, vol. 1, p. 299.

⁴⁵² D’Avack, *I rapporti fra Stato e Chiesa*, p. 106.

B2 Draft article 5,⁴⁵³ clauses 2 and 3

*“I loro rapporti sono regolati dai Patti Lateranensi.
Qualsiasi modificazione dei Patti, bilateralmente accettata, non richiede
procedimento di revisione costituzionale.”*

a) THE CONSTITUTION AND THE LATERAN PACTS

(i) The origins of the debate

There can be no doubt that for the Catholic Church, the Christian Democrat party and other political parties with large Catholic numbers, clause two of article 5 of the draft Constitution of the Italian Republic was the apotheosis of Catholic political activity. Jemolo assessed the importance thus: “per i democristiani, che erano in buona parte superstiti del Partito popolare o provenienti dalle file dell’Azione cattolica, infine, l’articolo era veramente quello sostanziale della Costituzione, quello per cui avrebbero ceduto tutti gli altri.”⁴⁵⁴ Scoppola agrees with Jemolo’s assessment of this feeling among Catholics:

cultura e mentalità cattolica erano state tuttavia profondamente segnate dalla esperienza delle ‘compromissioni’, come si diceva allora, con il regime: l’idea che lo Stato dovesse assicurare alla Chiesa una condizione di privilegio legale era radicata nell’episcopato e nel clero. La difesa del Concordato del ’29 diventerà perciò uno dei cardini delle rivendicazioni cattoliche nella fase costituente.⁴⁵⁵

It had been a dearly held ideal of Pius XI to see Italy governed through Catholic social principles. Catholic Action had been the training ground for the new breed of Catholic politicians who emerged during the postwar period to guide Italy’s new democracy towards this dream. By far the most important weapon in their armoury were the Lateran Pacts. The Church had pushed for the Pacts to be signed during the reign of the Fascist government knowing that the concessions they demanded would have been far more difficult to obtain under a democratically elected government.⁴⁵⁶ And the Church’s position on the Pacts in 1946 was very clear, even if it was calling the politicians’ bluff: the Treaty and the Concordat remain untouched, or they both collapse – *‘simul stabant, simul cadent’*. This was a risky stance to take because to

⁴⁵³ Because there was confusion even among the *costituenti* as to whether to refer to this article as article 5 (i.e. its draft number) or article 7 (i.e. its number in the final version of the constitution), for simplicity’s sake, I will refer to it primarily as article 5.

⁴⁵⁴ Jemolo, *Chiesa e Stato in Italia*, p. 308.

⁴⁵⁵ Scoppola, *La repubblica dei partiti*, p. 99.

⁴⁵⁶ See section A1 (vi) of this thesis.

lose the Pacts would have taken Church/State relations back to a similar situation to that prevailing at the time of Unification. However, retaining the Pacts as the basis of relations between Church and State would have huge benefits for the Vatican: it would guarantee an unprecedented level of influence in key areas of the social and political life of the country; it would keep the financial stability the Vatican had achieved via the massive cash remuneration (for the loss of the Papal States), the portfolio of Italian Consols bearer bonds – these two items alone worth 1.75 billion lire,⁴⁵⁷ and it would continue to enjoy many other concessions, such as the maintenance of the railway station built under the 1929 agreements with connections to the Italian State rail network, connection to the Italian telegraphic, telephonic, wireless broadcasting and postal services.⁴⁵⁸ But for the parties of the left, and especially the non-Catholic jurists in the Assembly such as Cevolotto and Calamandrei, insertion of the Lateran Pacts into the Constitution was to be avoided at all costs, otherwise it would be the death-knell for their dream of a truly lay, truly democratic republic.

So the battle lines were drawn. Political opinion was, on the whole, poles apart on the issue. It was up to the Dc's young blood to win the day. But they were not alone – supporting them was the immense power of the Church, its press and a phalanx of cardinals and other ecclesiastics providing moral, political, spiritual, logistical and propaganda support. And yet the outcome was still not certain. Mario Casella points to Communist threats to vote against insertion of the Pacts as the probable origins of the debate in the Constituent Assembly.

Dopo il 2 giugno, specie durante e dopo la campagna anticlericale dell'autunno 1946 . . . crebbero tra i cattolici le incertezze sull'atteggiamento che i partiti laici e marxisti avrebbero tenuto nella Costituente di fronte al problema dei rapporti tra Stato e Chiesa in generale e dei Patti lateranensi in particolare. Nelle settimane che precedettero e accompagnarono la discussione in Aula dell'art. 5 si accentuarono in Italia tensione e nervosismo.⁴⁵⁹

This was most keenly felt among the ecclesiastical hierarchy, who repeatedly insisted that the future political stability of the Vatican rested on the insertion of the Lateran Pacts into the Constitution.

⁴⁵⁷ Which equated to approximately £20 million in 1985; see Pollard *The Vatican and Italian Fascism: 1929-32*, Appendix II, p. 215.

⁴⁵⁸ Article 6 of the original Treaty also states: "All these works will be executed at the expense of the Italian State within one year of the coming into effect of the present Treaty." Pollard, *The Vatican and Italian Fascism: 1929-32*, Appendix II, p. 198.

⁴⁵⁹ Casella, *Cattolici e Costituente*, pp. 308-9.

(ii) The evolution of Article 5, clauses 2 and 3

An important and significant reference to the Lateran Pacts came on 25th July 1943 in the Dc party's *Programma di Milano*. This document bears witness to De Gasperi's (and the party's) initially relaxed attitude to amendments to the Concordat, however by January 1944, for a number of reasons already discussed, his position changed to one of absolute intransigence which would remain throughout all subsequent Dc policy documents.⁴⁶⁰ Then, in 1945, the *Settimana sociale dei cattolici italiani* took as its theme for discussion *Costituzione e Costituente*. The proposals that emerged from these discussions, included a specific request for the reconfirmation of the Lateran Concordat, along with an uncompromising demand for a 'Costituzione d'impronta cristiana'.⁴⁶¹ This theme of a 'Costituzione d'impronta cristiana' is taken up by the *dossettiani* regularly throughout the debates. But, as Jemolo points out, "la difesa dell'inclusione dei Patti lateranensi non è propria soltanto dei democratici cristiani; sono in questo senso i 'qualunquisti' che hanno raccolto tutti i voti dei superstiti fascisti. Parlano anche i superstiti della Camera prefascista."⁴⁶²

Authoritative calls for the reconfirmation of the Lateran Pacts (and especially the Concordat) from an ecclesiastical source came from a Catholic Action document, published nationwide during Easter 1946. The primary purpose of the document was to deny accusations that a section of the clergy were mobilising behind the monarchy. However, the document's call for neutrality among the clergy in the elections was accompanied by a request that following the institutional elections, the Pacts be reconfirmed to allow the status quo of Church/State relations to prevail.⁴⁶³

Subcommission 1

During the period of the Subcommission debates, proposals and amendments were constantly being presented as the arguments progressed. However, Cevolotto was left in a rather isolated position during the preparatory stage of the Subcommission's work because his Dc collaborator, Giuseppe Dossetti, was largely absent from the sessions. Cevolotto has to admit to the Subcommission that he has thus had no opportunity for any preparatory discussions with Dossetti. As a result, Cevolotto's

⁴⁶⁰ Some possible reasons for this change of attitude are posited in section A3 (vii) b), pp. 87-93 of this thesis; see also Damilano, *Atti e documenti della Dc*, pp. 9-25 and Scoppola, *La proposta politica*, pp. 76-105.

⁴⁶¹ A. Prandi, *Chiesa e politica* Bologna: Il Mulino, 1968, pp.27 & 45.

⁴⁶² Jemolo, *Chiesa e Stato*, p. 302.

⁴⁶³ S. Magister, *La politica vaticana e l'Italia (1943-1978)*, Roma, Riuniti: 1979, p. 58. Magister seems to be referring to a document different from the ICAS document discussed earlier, sent to the Assembly.

proposals are rather general in tone and substance, dealing principally with religious freedom as a liberty, and equality for the minority religious groups. I will therefore discuss the bulk of his preliminary proposals in Section B3 of this thesis.

However, he did make some observations on the Lateran Pacts which are worth discussing at this point. He thinks that relations between the State and the Catholic Church should be included within the framework of religious freedom and relations with churches of all faiths, whereas formal agreements currently in force, such as the Lateran Pacts, should not be included in the Constitution but should be dealt with by special legislation, which should in turn be guided rigidly by the Constitution. He also considers that, given the changes to the Constitution still in force (i.e. the Albertine Statute from which had been removed all references to the King and the monarchy), he thinks it would be necessary to amend article 21 of the Treaty and articles 12, 20 and 42 of the Concordat which contain explicit references to the King, the monarchy and the nobility.⁴⁶⁴

In order to get the debates underway, both Palmiro Togliatti (Pci) and Umberto Tupini (Dc, President of Subcommittee 1) presented interim proposals. Togliatti's proposals for discussion on Church/State relations were:

- a) Lo Stato è indipendente e sovrano nei confronti di ogni organizzazione religiosa od ecclesiastica.
- b) Lo Stato riconosce la sovranità della Chiesa cattolica nei limiti dell'ordinamento della Chiesa stessa.
- c) I rapporti tra Stato e Chiesa cattolica sono regolati in termini concordatari.⁴⁶⁵

President Tupini presented the following proposals:

- a) Le norme di diritto internazionale fanno parte dell'ordinamento della Repubblica. Le leggi della Repubblica non possono contraddirvi.
- b) La Repubblica riconosce la sovranità della Chiesa cattolica nella sfera dell'ordinamento giuridico di essa.
- c) I Patti Lateranensi, Trattato e Concordato, attualmente in vigore, sono riconosciuti come base dei rapporti tra la Chiesa cattolica e lo Stato.⁴⁶⁶

There is an important distinction to be made here: Togliatti's proposal is an attempt to ensure that Church/State relations are negotiated outside the boundaries of the

⁴⁶⁴ ACD, Busta 74, Fascicolo 1, "*Commissione per la Costituzione: 1° Sottocommissione. Relazione del Deputato Mario Cevolotto sui 'Rapporti fra Stato e Chiesa (Libertà religiosa)'*", Roma: Camera dei Deputati, 1999, pp. 37-42.

⁴⁶⁵ CRAC, vol.6, p. 768

⁴⁶⁶ Ibid.

Constitution; whereas Tupini's proposal assumes that the Pacts are an integral part of the Constitution and as such, form the basis of Church/State relations. Clauses 2 and 3, after the deliberations of the Subcommission, read as follows:

I loro rapporti sono regolati dai Patti Lateranensi.
Qualunque modifica di essi bilateralmente accettata, non richiederà un
procedimento di revisione costituzionale, ma sarà sottoposta a normale
procedura di ratifica.⁴⁶⁷

There follows another session of voting on each individual clause and any new amendments.⁴⁶⁸ Togliatti then proposed a slightly amended version of the third clause of his initial proposal as an amendment to the second clause: "I rapporti fra Stato e Chiesa sono regolati in termini concordatari."⁴⁶⁹ There are three points to be made about this amendment: firstly, with 27 votes in favour and 32 against, it was remarkably close for such a controversial amendment (as far as the Dc and the Right were concerned); secondly, Umberto Nobile, a high-ranking member of the Communist Party, voted with the Dc against the amendment; thirdly, of the people that voted in the ballot for the amendment, eight did not vote in the next ballot for the original clause.⁴⁷⁰ The eight included Togliatti himself, even though he insisted in a speech to the full Constituent Assembly that he did in fact vote for what became the final clause.⁴⁷¹ Whether this can be attributed to a lapse of memory or a desire to appear more accommodating, there is a detectable shift in Togliatti's position in the whole area of Church/State relations, from initial opposition to Catholic demands towards conciliation as Catholic intransigence on the inclusion of the Pacts seemed to him to risk creating a serious rift between the Dc and the Pci over the *pace religiosa*.

I will now examine the arguments that surfaced around the inclusion of the Lateran Pacts in the Constitution. As in Section B1, under each argument heading I

⁴⁶⁷ Ibid, p. 787.

⁴⁶⁸ For details see CRAC, vol. 6, pp. 149-158 and pp. 768-787.

⁴⁶⁹ Ibid., p. 158. See section B2 b) (vii) of this thesis for a more detailed analysis of this proposal.

⁴⁷⁰ Ibid. They were: Alessandro Bocconi (Psiup); Giovanni Conti (Pri); Giuseppe Di Vittorio (Pci); Concetto Marchesi (Pci); Umberto Nobile (Pci – who had also voted *against* Togliatti's amendment); Teresa Noce (Pci); Ferdinando Targetti (Psiup) and Palmiro Togliatti (Pci). The names of voting members, and the nature of their votes are included in CRAC at the points in the debates where votes are taken.

⁴⁷¹ CRAC, vol. 1, pp. 331-2. Why would Togliatti have abstained on such an important issue? Martinelli offers a possible explanation: Grieco, Togliatti and others at the head of the Communist Party were keen to play down their opposition to the insertion of the Lateran Pacts into the Constitution preferring to come to a compromise with the Dc on this and other sensitive matters like the family, indissolubility of marriage, private schools and the setting up of the regions. R. Martinelli, *Storia del partito comunista italiano*, Torino, Einaudi, 1995, p. 265.

will discuss the arguments as they were presented first in Subcommittee 1 (unless no such discussion took place) and then in the Constituent Assembly.

b) POLITICAL CONSIDERATIONS

(i) The legacy of the Albertine Statute: a confessional State?

In the new post-war situation, following the anti-Fascist alliance and cross-party collaboration, it was important to avoid the impression that the Catholics were attempting to establish a confessional state. This was essential to their debating strategy.

One of the major issues raised by the proposals to include the Lateran Pacts in the Constitution related to the fact that article 1 of the Treaty (and not the Concordat) ‘recognised and reaffirmed’ the reference in article 1 of the Albertine Statute that Catholicism was the only religion of the Italian State, thus creating a problem for the *laici*. Consequently, in response to speeches by Pietro Nenni (Psi) and Piero Calamandrei (Autonomista) and other proponents of the ‘lay state’ in the Constituent Assembly, Catholic *costituenti* and especially Catholic newspapers felt the need to send reassuring signals in the direction of left-wing and lay politicians. These took the form of speeches and articles not only denying the existence of a confessional state in Italy, but claiming that such a state was an impossibility. Replying to interventions on the subject by Calamandrei in the Assembly and by Crisafulli in *Rinascita*, Federico Alessandrini, editor of ‘Il Quotidiano’ (the main Catholic Action newspaper) wrote:

Lo Stato confessionale, a rigor di termini, dovrebbe attuare le esigenze di una ‘confessione’ religiosa. Ora se è vero, come è vero, che il cattolicesimo è una disciplina di vita spirituale e morale fondata su la libertà umana, è altrettanto vero che esso non può costringere nessuno a pensieri e ad opere che non siano liberi . . . Uno Stato confessionale nel senso che oggi si vuol attribuire alla parola non è da temere. Quando noi cattolici difendiamo i Patti lateranensi, quando approviamo che se ne faccia esplicito ricordo nella nuova Costituzione dell’Italia, noi non meditiamo di asservire nessuno: vogliamo soltanto che a tutti i credenti – che sono la maggioranza del Paese – sia consentito di vivere secondo le loro personali convinzioni.⁴⁷²

However, Nenni and the Socialists rejected article 1 of the 1929 Treaty because as a result, “lo Stato italiano è abbassato al livello di Stato confessionale e chiesastico.”⁴⁷³ Arguments in the Assembly, as we shall see, suggested that such a situation already

⁴⁷² F. Alessandrini, *Stato democratico o stato confessionale?* in ‘Il Quotidiano’ 7th March 1947, p.1.

⁴⁷³ CRAC, vol. 1, p. 633.

existed in Italy. But Alessandrini, in another article entitled, ‘Stato democratico o Stato confessionale?’ emphatically denied this:

Lo Stato confessionale cattolico . . . non esiste e non è possibile: la Chiesa non può costringere nessuno a santificarsi suo malgrado e gli uomini aderiscono alle verità della fede e alla morale che ne deriva spontaneamente, per un atto di volontà che deve essere libero. Una sola cosa può domandare la Chiesa allo Stato: che lasci ai cittadini l’intera libertà di santificarsi, di vivere in armonia con la fede che professano, di vivere cioè secondo le loro personali convinzioni . . . Quando i cattolici italiani insistono perché il Concordato sia inserito nella nuova Carta dello Stato italiano, non chiedono nulla che sia in contrasto con lo spirito e la lettera di un reggimento democratico. Ed è inutile citare articoli concordatari che sarebbero in antitesi con la coscienza ‘laica’, quasi che lo Stato potesse avere un coscienza diversa da quella dei cittadini che lo compongono, un contenuto ‘morale’ autonomo ed autosufficiente.⁴⁷⁴

That is what the Catholic press had to say, but what of the *costituenti*?

Subcommission 1

As we have seen, from the start of the opening debate, Cevolotto (Pdl) raised the question of whether an international treaty such as the Lateran Pacts should be inserted into a republican constitution. He highlights the problem of Article 1 of the Treaty which states that the Catholic religion is the only religion of state in Italy, pointing out that since the Albertine Statute, the Italian State had passed laws which had nullified the effects of Article 1, and that prior to the Treaty, Italy was moving towards being an aconfessional state. Any reference to the Pacts would automatically recreate a confessional state, which he is against. But neither is he in favour of creating a ‘lay state’ which, he claims, would encourage anticlerical feelings.⁴⁷⁵

Article 1 of the Treaty should not be included in the constitution and he says that on this point there is no possibility of agreement between himself and Dossetti.

Umberto Merlin (Dc) points out to Cevolotto that Article 1 of the Albertine Statute has never been considered non-existent and neither has there been any law passed in Italy that has had “il coraggio di abrogarlo”. He makes it quite clear that he is against re-establishing a confessional state, but draws attention to the ‘reality’ of the position of the Catholic Church in Italy. He considers the proposals put forward

⁴⁷⁴ F. Alessandrini, *Art. 5 e democrazia* in ‘Il Quotidiano’, 22nd March 1947, p.1.

⁴⁷⁵ CRAC, vol. 6, p. 718.

on freedom of religion and conscience to be ample for even the harshest of opponents.⁴⁷⁶

Togliatti presents a doctrinal argument: the State cannot have a religion, religion belongs to individuals. Consequently, he says that the Communists disagree with Article 1 of the Treaty, which came from Article 1 of the old Albertine Statute. How they intend to keep the Pacts in force and reject Article 1 is a valid question. The Communists consider the article to have had an historical value, which they don't want to argue about, but they will oppose its insertion into the new Constitution as it could in future cause legal problems for the State at international level. He says that the differences between Communists and Dc members are not insoluble at a political level: when the Constitution is voted on, the Communists are prepared to admit, in a separate act of the Assembly, that the Pacts are still in force.⁴⁷⁷ This position held by Togliatti would, over the course of the debates, undergo several mutations.

Constituent Assembly

In relation to the familiarity of the *costituenti* with the contents of the Pacts, Della Seta (Pri) makes quite a remarkable statement: “Io conosco tanti, anche fra gli onorevoli colleghi, ed anche fra gli uomini di legge, che sono venuti a dirmi: hai letto i Patti Lateranensi? Io non li conosco.”⁴⁷⁸ This general lack of knowledge of the contents of the Pacts has, he claims, allowed the Dc party to win support for their inclusion. But he says that if they want the new State to be confessional, to have its own religion and for that religion to be Catholicism, then they should have the courage to say so explicitly in an article of the Constitution. He criticises the overzealous attempts at compromise which have resulted in a fudged document which in certain respects moves Italy towards a democracy, in others it returns the country, by means of the reference to the Albertine Statute and confessionalism, to the position it was in under fascism; and in its continued moral and juridical oppression of the religious minorities it jars against the modern conscience of post-war Italians.

During the course of his speech, Alfonso Rubilli (Udn) warns that the Statute

⁴⁷⁶ Ibid., p. 724.

⁴⁷⁷ Ibid., p. 784-5.

⁴⁷⁸ CRAC, vol. 1, p. 181.

non era per i tempi nostri, ed era di già invecchiato prima del fascismo, tanto che si sentiva da ogni parte il bisogno ed il desiderio di modificarlo. Ma anche se fosse stato modificato ai tempi nostri, bisognava abolirlo come un documento che non aveva avuto grande fortuna dopo quello che si è verificato. Si capisce, quindi, colleghi, che non ho proprio alcuna voglia di richiamare in vigore lo Statuto Albertino.⁴⁷⁹

In response to claims by Orlando, Togliatti insists that he did not say he was in favour of inserting the Pacts,

Ho votato contro questo richiamo e anche qui, sino a che il problema sarà posto nel modo come adesso è posto, voteremo contro.⁴⁸⁰ Attraverso quel richiamo così esplicito, infatti, ritorniamo all'articolo primo dello Statuto. Ora non dimentichiamo che l'articolo primo dello Statuto, in tutte le discussioni che ebbero luogo prima nel Parlamento subalpino, dal 1849 in poi, e quindi nei successivi Parlamenti italiani, venne sempre considerato come qualche cosa di decaduto. Basti ricordare in proposito il discorso di Marco Minghetti nel dibattito sulla legge delle Garantigie, dove egli dice la cosa apertamente, e aggiunge che l'articolo primo viene lasciato nello Statuto unicamente per non aprire un procedimento di revisione costituzionale. È soltanto nel Trattato lateranense che questo articolo viene riesumato e rimesso in circolazione, ed è principalmente per questo che l'inserimento dei Patti lateranensi nella nuova Costituzione non è da noi approvato. Quando volete farci tornare alla religione di Stato, ci volete fare tornare a qualche cosa che la nostra coscienza non può accettare.⁴⁸¹

The republican Francesco De Vita warns of the grave consequences for the state and its people of imposing a religion of state:

Quando allo Stato si dà una religione, esso deve difenderla. Questo mi sembra ovvio; e in questa difesa esercita una inammissibile pressione sulla coscienza dell'individuo, violando una delle fondamentali libertà della persona umana. Nell'attuale stato di sviluppo della nostra civiltà, il rispetto delle opinioni dei singoli professanti religioni differenti deve assurgere a maggiore pubblica considerazione. I cittadini devono essere effettivamente eguali di fronte alla legge, indipendentemente dalla religione professata.⁴⁸²

In direct contrast to such sentiments, Stefano Riccio goes where no Cristian Democrat has gone before in public, launching headlong into a defence of the Confessional State:

Per aversi uno Stato confessionale è necessario: a) un giudizio di valore, per cui lo Stato dichiara di aderire ad una determinata confessione, riconosciuta come la sola, vera religione; b) conseguentemente un regime di particolare

⁴⁷⁹ Ibid., p. 220.

⁴⁸⁰ In fact, Togliatti did not vote.

⁴⁸¹ Ibid., p. 331-2.

⁴⁸² Ibid., p. 361.

favore per siffatta confessione. Ad aversi perciò uno Stato confessionale non basta il semplice riconoscimento esterno di una data religione come fenomeno storico, né quello dell'eventuale prevalente importanza da essa conquistata nella storia di un popolo. Né un regime giuridico speciale per il culto prevalente contraddice al principio dell'uguaglianza dei culti. Uguaglianza giuridica non significa trattamento uguale di problemi disuguali, ma applicazione dei principî di giustizia alle situazioni concrete. 'A ciascuno il suo: non a tutti lo stesso', è il principio di giustizia. L'uguaglianza non è parità aritmetica né quantitativa; come la giustizia è proporzione. Sostenere principî diversi significa non già soltanto non riconoscere alcuni privilegi alla Chiesa cattolica, ma anzi combattere e negare quella importanza che storicamente essa ha assunto di fronte al nostro popolo; significa negare una realtà sociale attuale, cui deve ispirarsi una Costituzione la quale quella realtà deve pur garantire ed organizzare.⁴⁸³

State *laicismo*, if it manifests itself as agnosticism in relation to the dogmas of individual religions, cannot also manifest itself as disinterest in the social facets and structural formation of a given religious confession, according to Riccio. Treating the Church as a *società privata*, which would result in the rights of Catholics to publicly demonstrate their religious beliefs being ignored, and the Church being put in a subordinate position to the state,

sarebbe intollerabile dovunque, e soprattutto in Italia. Noi cattolici italiani abbiamo il diritto di chiedere alla legge fondamentale del nostro Paese che l'Italia non diventi la *longa manus* dell'anticattolicesimo e dell'anticlericalesimo mondiale nella parvificazione della Santa Sede, del Papato e della Chiesa cattolica.⁴⁸⁴ Tutti uguali di fronte allo Stato; ma ciascuno deve essere libero di credere e di esprimere esternamente il proprio culto.⁴⁸⁵ Sarebbe altrimenti un'uguaglianza estrinseca, uniformista, imposta, non quella di uomini liberi che vivono nella loro libertà e realizzano il loro ideale e che in libertà si uniscono e si associano per gli scopi della vita e trasmettono a queste associazioni la loro stessa libertà, per cui anche queste vanno rispettate dallo Stato; onde la concezione pluralista di cui parlava l'onorevole La Pira. La Chiesa è la società dei credenti, i quali vivono nello Stato. E se Stato e Chiesa si riferiscono allo stesso soggetto umano, cioè necessariamente interferiscono ai soggetti destinatari dell'esercizio delle loro funzioni, è evidente che non si possono ignorare reciprocamente. Distinzione sì, ma non contrasto; laicismo dello Stato e uguaglianza dei cittadini di fronte allo Stato, ma non livellamento di tutti i cittadini e di tutte le fedi.⁴⁸⁶

⁴⁸³ Ibid., p. 383.

⁴⁸⁴ Here Riccio is exaggerating the consequences of a lay state for political effect.

⁴⁸⁵ This clearly did not happen.

⁴⁸⁶ Ibid., p. 383-4. There are different uses of the term 'pluralist': the parties of the left, for example, tend to use the term to refer to equality across all religious denominations; however, La Pira's dossettian pluralism is conceived within Catholic integralist parameters. For a more detailed discussion of how the Catholic conception of pluralism differed from that of a liberal conception, see G. Bedani, *Pluralism, integralism and the framing of the republican constitution in Italy: the role of the Catholic left*, in G. Bedani et alia (Eds.) *Sguardi sull'Italia*, Leeds, Society for Italian Studies, 1997, pp. 158-170.

One of the main themes he keeps coming back to in his defence of the Pacts is Italy's own special history and of the Catholic Church being an intrinsic part of that history; of what he terms, "la realtà sociale attualissima. Non si fa e non si può fare una Costituzione rinnegando la storia di un Paese e la realtà sociale che è base e coronamento insieme della Costituzione."⁴⁸⁷

Having glossed over Article 1 of the Treaty, he further denies that the wording means the recognition of a single religion as the only religion of State,

anche se significa riconoscimento di una situazione di rilievo particolare alla religione della maggioranza degli italiani, come del resto è voluto dalle stesse norme sostanzialmente democratiche, le quali devono garantire i diritti della minoranza, ma non disconoscere quelli della maggioranza, né evitarne in pieno la realizzazione. Ed in verità, in nome della maggioranza dei cattolici, organizzati in tutti i partiti, in quanto tutti i partiti hanno dichiarato di prescindere dalla religione per la iscrizione, noi avremmo il diritto di porre nella Costituzione una dichiarazione espressa che la religione degli italiani è la religione cattolica.⁴⁸⁸

So having initially denied that acceptance of the Pacts means the return to a confessional State, his closing argument seems to be calling for precisely that.

Although he accepted that the Treaty, with its reference to the Albertine Statute may well have resulted in a confessional state according to its official declaration, Orazio Condorelli (Bnl) questions whether the reality of the situation amounted to such a state of affairs:

Malgrado quella dichiarazione, lo Stato piemontese prima e lo Stato italiano poi non furono mai degli Stati confessionali. Era una dichiarazione che aveva soltanto questo significato: ove lo Stato avesse avuto bisogno di accompagnare dei suoi atti con riti propiziatori o di ringraziamento, avrebbe dovuto ricorrere al rito cattolico e ai sacerdoti cattolici. Non ebbe mai altro significato, e non ne ha acquistato nuovo, quando è stato trascritto nel Trattato. Il significato è rimasto identico.⁴⁸⁹

Condorelli's speech, along with that of others, illustrates the problems inherent in a discussion around a concept (in this case the confessional state) where there is no universally accepted definition of its meaning. It could denote a variety of meanings ranging from a purely formal declaration with little practical purchase on the historical reality of the situation (the 'dead letter' argument), to a full realisation of Catholic principles in the social and juridical framework of the country's

⁴⁸⁷ CRAC, vol. 1, p. 384. The phrase 'base e coronamento' is borrowed by Riccio from Article 36 of the Concordat dealing with Church control over education.

⁴⁸⁸ Ibid., p.390.

⁴⁸⁹ Ibid., p. 449.

institutions. It is important to keep this in mind when reading the debates. On this occasion Condorelli is employing a 'dead letter' argument which, however, takes little account of the logistical, financial and educational privileges enjoyed by the Catholic Church after 1929. He refers to the purely formal Catholic liturgical accompaniments on state occasions. As we shall see, however, the performance of the Catholic liturgy enjoyed an exclusive liberty at the expense of the Protestants, for example during the fascist period. It is also interesting to note that Condorelli goes on to minimise the risk of a confessional state, "perché lo Stato moderno è spersonalizzato."⁴⁹⁰ Condorelli's argument at this point pursues his pragmatic approach in suggesting that in the modern world the state has an 'impersonal' character, which makes the idea of a confessional state in Italy impracticable. The pragmatism of his approach is clear from his choice of the term 'spersonalizzato' in relation to the more ideologically resonant 'laico'; he wished to avoid a Catholic reaction to his argument. Others, however, were not prepared to accept either Condorelli's 'dead letter' argument, or his compromising pragmatism. In an attempt to clarify the definition of the confessional state, Arturo Labriola (Udn) cites the first article of the Albertine Statute (la "religione cattolica, apostolica e romana è la sola religione dello Stato") and puts particular emphasis on the word 'sola' saying that with this word there is no room for equivocation.

Con quelle parole si affermano due cose: 1) che lo Stato deve avere - e quindi ha - una religione; 2) che questa religione è appunto la cattolica. A mio avviso, nessuna delle due tesi può reggere, in genere, per uno Stato moderno; non può reggere, ad ogni modo, per una Repubblica democratica, come quella che pretendiamo di aver fondata. Si resta sorpresi sentendo da qualche parte affermare che la dichiarazione che lo Stato proclama la sua appartenenza alla religione cattolica non implica il suo confessionarismo. Non capisco che cosa da certi parti si voglia per riconoscere il carattere confessionale dello Stato; quindi da parte sua un obbligo di difesa di essa e di offesa, implicita, verso gli altri culti.⁴⁹¹

He says that the declaration found in Article 1 of the Treaty can only mean a confessional state, something he must vote against if it were to be included in the Constitution. But he emphasises that opposing its insertion in the Constitution does not mean not respecting it as a special treaty.

Lo Stato è un complesso di uffici e di organi. Esso non è un individuo senziente, e quindi i problemi della coscienza religiosa non lo riguardano.

⁴⁹⁰ Ibid.

⁴⁹¹ Ibid., p. 482.

Esso non è né cattolico, né buddista, né confuciano, né ateo. Esso è un complesso amministrativo fornito di coazione; ecco tutto. Quando s'imbatta in organi del culto, prende con essi accordi particolari, da cui i Concordati o le leggi riguardanti gli altri complessi del culto.⁴⁹²

A monarchy can declare itself to have a specific religion, but, he says, this is not the case with a democratic republic.

Calamandrei asks the members of the Assembly whether they realise that the first article of the Treaty contradicts all religious liberties with its reference to a religion of State and hence a confessional State. He suggests that confirmation of whether a confessional State exists in Italy can be found in any standard reference book, such as the 'Nuovo Digesto Italiano' (which all lawyers have on their bookshelves) and in the entry on 'Confessionismo' edited by an advisor to the Court of Cassation, Piacentini.⁴⁹³ Even there, the Italian State, following the Lateran Accords, is defined as a 'confessional state'.

Se questo è esatto, ne deriva una seconda proposizione: che lo Stato confessionale è inconciliabile colla tutela della libertà di coscienza; perché, nel dare riconoscimento giuridico ad una religione di Stato, e col far passare così questa religione dal piano spirituale al piano temporale, inevitabilmente pone coloro che professano la religione dello Stato in condizione di favore e di privilegio giuridico, e in condizione di inferiorità e di menomazione giuridica gli appartenenti alle altre religioni retrocesse al grado di religioni tollerate.⁴⁹⁴

Calamandrei then cites an extract from a letter sent by Pius XI to his Cardinal Secretary of State Gasparri just after the Pacts were signed in 1929. He believes that there can be no more authoritative voice than that of the Pope himself to show how a confessional State and freedom of conscience are irreconcilable:

Anche meno ammissibile sembra che si sia voluto assicurare incolume ed intatta l'assoluta libertà di coscienza. Tanto varrebbe dire allora che la creatura non è soggetto al Creatore, tanto varrebbe legittimare ogni formazione, o piuttosto deformazione, delle coscienze anche più criminose e socialmente disastrose. Se si vuol dire che la coscienza sfugge ai poteri dello Stato, se si intende riconoscere, come si riconosce, che, in fatto di coscienza competente è la Chiesa ed essa sola, in forza del mandato divino, viene con ciò stesso riconosciuto che, in uno Stato cattolico, libertà di coscienza e di discussione debbono intendersi e praticarsi secondo la dottrina e la legge cattolica.⁴⁹⁵

⁴⁹² Ibid.

⁴⁹³ A Waldensian.

⁴⁹⁴ Ibid., p. 517.

⁴⁹⁵ Ibid. See F. Pacelli, *Diario della Conciliazione*, App. XLII, pp. 549-557 for the full letter.

From this we can see that Pope Pius XI clearly thought that a confessional State should exist in Italy.

Calamandrei quotes La Pira as saying that the Dc party does not want a confessional state, only a religious state. However, Calamandrei says, ‘a religious State’ is not a juridical concept; in such a state the practise of a religion, even if by the majority of citizens, is not imposed or guaranteed by law, unlike in a confessional state. He says that if the Dc party wants a democratic state with rights of liberty then they must remove Article 5 from the draft Constitution.

Expanding on the point he made in the subcommission regarding article 1 of the Albertine Statute being juridically defunct, Cevolotto, with a variant of the ‘dead letter’ argument, claims that many eminent lawyers have agreed that article 1 of the Statute had lost its significance over the decades, as a result of the various laws dealing with the permitted religions,⁴⁹⁶ while the basic premise of it (that Catholicism is the only religion of the State) was no longer relevant and thus had no influence on positive legislation.⁴⁹⁷ However, Cevolotto considers the article in terms of principles not actual laws, expanding on Jemolo’s point that article 1 of the Statute “non conteneva una vera e propria norma giuridica, e quindi non era possibile parlare né di abrogazione, né di desuetudine.”⁴⁹⁸ Under the post-unification Liberal governments the principle was modified and transformed to such an extent that jurists were forced to reassess the spiritual character of the Italian state which, according to some, was no longer a ‘confessional’ State. It was only with the signing of the Lateran Pacts that the confessional State was reborn. Despite Mussolini’s later attempts to undermine the Catholic Church’s great achievement in recreating for itself a confessional State within which to operate, closer examination of the letter sent by Pope Pius XI to Cardinal Gasparri (quoted above) reveals references that corroborate the view that a new Catholic confessional State did indeed, in the eyes of the Church, actually exist. Thus, inserting the Pacts would inevitably consolidate the confessional state and would necessitate alterations to Italian legislature to accommodate it.⁴⁹⁹ Cevolotto

⁴⁹⁶ See section A2 of this thesis.

⁴⁹⁷ However, it could be argued that the opposite was also true: the Vatican enjoyed a considerable *risorgimento* of its power and influence under the Fascist regime, to the point where one could argue that the principle behind article 1 of the Albertine Statute, far from being irrelevant and outdated, was instrumental in creating the huge raft of legislation against the minority religions – legislation which, it must be remembered, remained in force and unamended throughout the period of the Constituent Assembly and beyond.

⁴⁹⁸ CRAC, vol. 1, p. 541

⁴⁹⁹ In fact, such alterations had already been allowed for in clause 1 of article 29 of the Concordat: “The Italian State will revise its legislation, in so far as it refers to ecclesiastical matters, so as to

considers it imperative that the State should not be put in a position where it finds itself unable to act unilaterally if it believes it is in its own interest to do so.

In order to mollify the concern felt by the left-wing parties that article 1 of the Treaty would result in the regeneration of a confessional, subordinate State and the subordination of all non-Catholic religious groups, Dossetti refers to Mario Falco's *Corso di diritto ecclesiastico*: if concerns had been raised regarding the reaffirmation of a confessional State, and the subordination of the non-Catholic minorities, then those doubts would have been settled by the debates subsequent to the 11th February, 1929 (presumably a reference to the *culti ammessi* laws) and by the juridical framework put in place by the executive laws dealing with the Accords.⁵⁰⁰

Furthermore, Dossetti insists that article 1 of the Lateran Treaty only impacts on Italian citizens in so far as it is the religion practised by the 'great majority' of them (a favourite phrase of the Dc party), and on the State when the latter has recourse to religious ceremonies, since it looks, by default, to Roman Catholicism. He also strongly defends the tone of the letter sent by Pope Pius XI to Cardinal Gasparri, written in response to a typically bullish and decidedly undiplomatic speech made by Mussolini in the *Camera dei Deputati* celebrating his 'great achievement' in signing the Pacts. Dossetti suggests that the only response to such a speech was to be equally bullish and biased in favour of the Church.⁵⁰¹

In response to the arguments against insertion of the Pacts, Gennaro Patricolo (Udn) puts forward the following amendment to article 5, clauses 1 and 2, which can only be described as driving a steamroller through this delicately balanced debate:

La Religione cattolica è la religione ufficiale della Repubblica italiana.
I rapporti tra la Chiesa cattolica e lo Stato sono regolati dal Concordato
lateranense.⁵⁰²

The first clause of the proposed article is unacceptable because it could not prevent the conflicts between the State and the Catholic Church; the second clause is not specific enough and, as such, does not offer any guarantees for the longevity of the

reform and complete it, putting it into harmony with the principles of the Treaty stipulated with the Holy See and this Concordat." Pollard, *The Vatican and Italian Fascism: 1929-32*, Appendix II, p. 209 and cited in CRAC, vol. 1, p. 546.

⁵⁰⁰ Ibid., p. 555. Although the *culti ammessi* laws did, on paper at least, improve the situation of the minority religious groups in Italy – something freely admitted by some of the groups at the time – in practice, the application of the laws dramatically impinged on the freedom within which the groups were able to operate, as will be shown in Section C.

⁵⁰¹ Ibid. That Pius XI was so disparaging of the minority religions in the letter shows just how fearful the Church was about the perceived threat to its magisterium from these tiny and, frankly, at the time, inconsequential religious groups.

⁵⁰² Ibid., p. 623.

Concordat. He believes the first clause of the amendment is essential in that it honestly reflects the religious situation in Italy and the feelings of the vast majority of Italians. The second clause emanates from the dual juridical personality of the Catholic Church with its spiritual jurisdiction and the Vatican with its (albeit reduced since unification) temporal status. Patricolo accepts that a diarchy headed by the Italian State and Vatican City State would be a nonsense,⁵⁰³ but the proposed wording of article 5 as it stands is confusing: whereas the first clause refers (correctly) only to the Catholic Church, the second clause suggests that relations between Church and State are regulated by the Pacts. However, a distinction must be made between the Treaty (which governs relations between the Vatican and the State) and the Concordat (which governs relations between the Church and the State). Hence the wording of the second clause.⁵⁰⁴ Surprisingly, although he is against the inclusion in the Constitution of the first article of the Albertine Statute and its declaration of a confessional State, Patricolo closes his argument with a call for the Constitution to explicitly recognise Catholicism as the religion of State.

(ii) Italy's Catholic majority

One of the arguments that Catholics had repeated recourse to in their determination to have the Pacts included in the Constitution was that the Catholic faith was the religion of the vast majority of the population. This was, in effect, a defence of section 2 of the ICAS proposals.⁵⁰⁵

Having realised early on in the debates that there were attempts to impose a Catholic flavour on the new Constitution, in September 1946, Togliatti affirmed that:

Noi crediamo che a ciò occorre risolutamente opporsi ma non con un'affermazione di carattere anticlericale contro la chiesa cattolica in particolare e contro lo spirito cattolico che è un realtà di fatto in quanto è lo spirito della grande maggioranza del popolo italiano, ma nel difendere tenacemente la piena libertà di coscienza e di culto ed affermando implicitamente ed esplicitamente la piena uguaglianza di tutte le religioni indipendentemente dal seguito maggiore o minore che esse possano avere.⁵⁰⁶

⁵⁰³ See section B2 b(iv) of this thesis.

⁵⁰⁴ CRAC, vol. 1, p. 624-6.

⁵⁰⁵ See Appendix III. As will be clear from a comparison between the arguments presented by the Catholics and the text of section 2, the former are simply an elaboration, sometimes word-for-word of the latter.

⁵⁰⁶ APC, *Verballi del CC*, 18-21 settembre 1946, p. 26; cited in Martinelli, *Storia del Partito Comunista italiano*, p. 263.

This clear stance was taken against the possibility of accepting the Concordat – one of the more delicate discussions undertaken by the Communist leadership at that time (Togliatti had already displayed a much more flexible position on the matter at the fifth congress of the Communist party earlier that year.)⁵⁰⁷

Subcommission 1

Early in the subcommission debates, Cevolotto appears to be keen to acquiesce to Dc demands:

Non si può prescindere dal fatto che, per quanto le minoranze siano degne di ogni protezione nella loro assoluta libertà, in Italia la religione cattolica è la religione della grande maggioranza dei cittadini. Perciò io non riterrei inopportuno che nel preambolo della Costituzione, in linea storico e di fatto, fosse inserito una dichiarazione in questo senso.⁵⁰⁸

Togliatti is also already yielding towards the Dc. He says that he would not be against an article that stated that the Catholic Church, as the representative of the faith of the majority of Italians, regulates its relations with the State by means of the Concordat.⁵⁰⁹

In answer to Dossetti's claim that his party's call for the Lateran Concordat to be included wholesale into the Constitution represents the wishes of the great majority of Italian Catholics, Marchesi points out that there are a great many Italian Catholics who belong to other parties. He questions whether they want to have the current Concordat inserted into the Constitution or whether they simply ask for a Catholic Church that is free and respected, but that does not have powers attributed to it that ought to belong to the Italian State.⁵¹⁰

Constituent Assembly

Umberto Tupini (Dc), President of Subcommission 1, advises the Assembly that if the Lateran Pacts are inserted in the Constitution a big step forward will be made in consolidating the *pace religiosa* in Italy. He says,

Sarà questo un atto opportuno e giusto, perché riconsacrerà nel piano democratico la fine del dannoso divorzio tra la coscienza cattolica e la coscienza nazionale del nostro popolo, che nella sua quasi totalità rimane

⁵⁰⁷ Martinelli, *Storia del Partito Comunista italiano*, p. 263.

⁵⁰⁸ ACD, Busta 74, Fascicolo 1, *Commissione per la Costituzione: 1° Sottocommissione. Relazione del Deputato Mario Cevolotto sui 'Rapporti fra Stato e Chiesa (Libertà religiosa)*, p. 40.

⁵⁰⁹ CRAC, vol. 6, p. 721.

⁵¹⁰ Ibid., p. 782.

fedele alla religione dei Padri. È appunto l'appartenenza della grande maggioranza dell'Italia alla religione cattolica che giustifica appieno la nuova posizione di natura costituzionale che si dovrebbe fare, e che, io spero, si farà ai Patti del Laterano.⁵¹¹

Tupini comments on Togliatti's assessment of Church/State relations as "un grave problema" and uses this to highlight the vast difference between the other parties, which, he claims, want to ignore the issue, and the Dc party which wants to confront and address it. He says, "I Patti firmati dal fascismo non sono nati come funghi sotto la pioggia della dittatura, ma furono preparati nell'attesa ansiosa di tutto il popolo e dall'opera lenta e lungimirante di statisti egregi."⁵¹² Optimistically, and rather condescendingly, Tupini says that inclusion of the Pacts will not constitute a crystallisation of the position of the Church in state affairs:

la Chiesa cattolica è sempre talmente saggia che, intransigente nella difesa del suo patrimonio spirituale e religioso, mostra, come ha sempre dimostrato, di tenere esatto conto della varietà successiva o progressiva delle condizioni storiche dei vari Paesi, con un spirito di adeguamento che desta sorpresa e meraviglia nei profani e, comunque, negli estranei alla dinamica della sua perenne vitalità.⁵¹³

He says there will be no constitutional problems with the inclusion as a result of the third clause of article 5 (draft) allowing for modification without recourse to constitutional revision procedures.⁵¹⁴ He goes on to make a quite remarkable claim: "Si attua così sul terreno costituzionale quello che Jacques Maritain ha definito un pluralismo anche nel campo religioso."⁵¹⁵

In response to Palmiro Foresi (Dc), who points out that Italian Catholics make up the absolute majority of the population, Francesco De Vita (Pri) insists that,

Anche se in Italia ci fosse un solo uomo che la pensasse diversamente dalla maggioranza, noi, in omaggio alla libertà dell'individuo, dovremmo assicurargli la piena libertà di coscienza e di pensiero.⁵¹⁶

⁵¹¹ CRAC, vol. 1, p. 170.

⁵¹² Ibid., p. 171. He takes for granted the impact of the Lateran Pacts on the general population of Italy – a tactic adopted by many Dc deputies.

⁵¹³ Ibid.

⁵¹⁴ Ibid.

⁵¹⁵ Ibid., pp. 171-2. From a Dc perspective, they believed they were creating a pluralism, but as Bedani has shown, this was at the very least a highly problematic claim. In addition to the article referred to earlier by Bedani, other aspects of the problem are also discussed in his 'The Dossettiani and the concept of the secular state in the constitutional debates: 1946-1947', *Modern Italy*, volume 1, Autumn 1996, pp. 3-22.

⁵¹⁶ CRAC, vol. 1, pp. 361-2.

The democristiano Stefano Riccio argues against the criticism of Article 1 of the Albertine Statute falling into disuse and thus not being valid: “la desuetudine non può invalidare una legge costituzionale; ma il cattolicesimo, in applicazione di quella norma, è stato sempre ritenuto come la religione della maggioranza del popolo italiano.”⁵¹⁷ On behalf of the Christian Democrat Party he applauds Togliatti for saying that (religious) unity, having been achieved, must now be maintained and defended. But he then warns Togliatti and the Left:

Vi è un bene che appartiene alla maggioranza degli italiani; questo è il cattolicesimo. In esso è la base della unità etica. Non lo attaccate; creereste la rottura e sareste i responsabili di questa frattura. L'unico mezzo per mantenere l'equilibrio è la riconferma dei Patti; e data la grande importanza di essi, nel momento della rinnovazione sostanziale della vita giuridica italiana, il loro richiamo nella Costituzione costituisce una necessità assoluta ed inderogabile. Questo richiamo è di garanzia che lo Stato domani non si allontani dalla volontà popolare e consideri la Chiesa come una qualunque società privata, invadendone il campo e perseguitandola. Noi, costruttori di un domani democratico d'Italia (e crediamo che tali siano anche l'onorevole Marchesi e l'onorevole Nenni), non possiamo non volere la garanzia costituzionale delle libertà religiose con il richiamo al Concordato, che è fonte sicura di pace religiosa. La politica religiosa dello Stato Italiano dovrà essere ispirata alla leale realizzazione della Costituzione.⁵¹⁸

Riccio's argument is almost a paradigmatic illustration of how the Catholic position would have persuaded Togliatti in the final analysis, to drop his objections and vote in favour of the inclusion of the Pacts in the Constitution. To the communist leader, the threat “creereste la rottura e sareste i responsabili di questa frattura” was the signal of a future Dc attempt to present the left in an anti-clerical and divisive light if he did not vote in favour of inclusion. This was a battle Togliatti was anxious to avoid at all costs, aware of the susceptibility of the unpoliticised Catholic masses to anti-leftist propaganda. But what was perhaps equally seductive was Riccio's admission that Marchesi (the Communist) and Nenni (the Socialist) represented political forces which shared with the *democristiani* the title of “costruttori di un domani democratico d'Italia”. This was one of Togliatti's principle aims: that the creation of the Italian republic should be seen as the work of the Italian Communists with equal recognition alongside other popular political forces. At the time the appeal

⁵¹⁷ Ibid., p. 387.

⁵¹⁸ Ibid.

to Togliatti of such public recognition from the Catholic side is difficult to exaggerate.⁵¹⁹

To return to the ‘majority’ argument, De Gasperi quotes figures from the 1931 census (no figures were available for 1942): out of 45,526,770 inhabitants, 45,349,221 declared themselves to be Catholics; there were 2 Protestants per 1000 of the population; 30,000 Jews (reduced from 54,000 due to Fascist and Nazi persecution) and 18,000 non-believers. In response, Nenni, less prone to compromise than Togliatti, says that of all arguments put forward by the Dc in relation to inclusion of the Pacts in the Constitution, this is the weakest: “Appunto perché le statistiche sono quello che sono, appunto perché la religione cattolica abbraccia la quasi totalità del nostro popolo, voi non avete bisogno di particolari garanzie giuridiche a sostegno della garanzia di libertà per la Chiesa.”⁵²⁰

The final word on the Catholic majority issue should go to the *qualunquista*, Mario Rodinò. He is mainly concerned about the need for democracy and considers that Togliatti’s view (that the Constitution should not only be democratic but specifically anti-fascist) means that it must necessarily be also anti-communist. His right-wing, though refreshingly honest, Catholic credentials are obvious from his proposed amendment to article 5 which, similar in tone to that put forward by Gennaro Patricolo above, according to him should begin with the phrase: “La religione cattolica è la religione professata dalla enorme maggioranza del popolo italiano.” He goes on:

Un emendamento del genere dovrebbe essere accettato, se si pensa che, in luogo della semplice affermazione storica proposta, lo Statuto Albertino, compilato in periodo di intense correnti ed attività anticlericali, e quando ancora le masse cattoliche non partecipavano ufficialmente nella vita pubblica italiana, riconosceva tale verità con una asserzione molto più esplicita e molto più impegnativa.⁵²¹

This should also be done in gratitude to the Church for the succour and protection it has given to people of all faiths and parties in times of conflict. He claims that the amendment should also be included in gratitude to the Italian people for their vote on June 2nd 1946, when they demonstrated clearly and democratically

⁵¹⁹ We need to bear in mind that the full force of Catholic anti-communist feeling which later emerged with the national elections of 1948 was fuelled by external factors, and was precisely what Togliatti wished to avoid.

⁵²⁰ Ibid., p. 633.

⁵²¹ Ibid., p. 532.

“di desiderare in grandissima maggioranza una Costituzione ispirata ai principi cattolici e di carattere liberistico: certamente, non comunista.”⁵²²

(iii) Sovereignty

The issue of sovereignty, in relation to the Lateran Pacts, revolved around the problem of whether insertion of the Pacts in the Constitution would cause any loss of sovereignty to the State in carrying out the terms of the Concordat and in any future renegotiation of the Pacts.

Subcommission 1

The Lateran Pacts as a means of regulating relations between Church and State are perfectly acceptable to Ottavio Mastrojanni (Uq), but he is against Dossetti's proposal to insert them into the Constitution, claiming that it will result in the renunciation of Italy's state autonomy.⁵²³ Dossetti argues that the Lateran Pacts are an external agreement between two states and therefore necessarily operate on an 'international' level, and so in accepting them one must also accept Italy's position as an active member of the international community. He says that one must accept the need to operate at an international as well as national level. In doing so, recognition of the organisation of the Church is a specific application of that principle.⁵²⁴ However, the natural progression of this argument is that, as an international agreement, as repeatedly pointed out by Calamandrei and other juridical experts from among the *laici*, the Pacts have no place in a national constitution.

Lelio Basso (Psi) questions the content of Article 1 of the Treaty (Catholicism as the only religion of State) and article 5 of the Concordat (limitations on apostate priests in the workplace) and its effect on State independence.⁵²⁵ He puts forward a technical argument: the State may have been sovereign when it accepted the limitations imposed by the Pacts, but once both sides agreed to them (ie. in

⁵²² Ibid., p. 530. Rodinò's reference to the vote on June 2nd as expressing a desire for Catholic principles to be incorporated into the Constitution refers, not to the vote in favour of the Republic (which can have no essential reference to Catholicism), but to the other vote the population were asked to cast, i.e. for members to the Constituent Assembly. The Dc obtained 35.18% of the votes, ahead of both the Pci (18.96%) and the Psi (20.72%). D. Sassoon, *Contemporary Italy*, London Longmans, 1986, Table 8.1, p. 167. Rodinò makes his argument, of course, from a 'relative majority' position. It becomes implausible and in effect almost impossible to decipher if we attempt to guess the positions of the votes for other political forces.

⁵²³ CRAC, vol. 6, p. 722.

⁵²⁴ Ibid., p. 723.

⁵²⁵ Ibid., p. 725.

1929), then such limitations instantly diminish the sovereignty of the one party (ie. the State).⁵²⁶

Constituent Assembly

Calamandrei's principle concern is with the third clause: "Qualunque modificazione di essi bilateralmente accettata non richiederà un procedimento di revisione costituzionale." This clause, if the wording remains intact, means that the State cannot unilaterally amend a certain part of its own Constitution, having to obtain the permission of the other contracting party, the Church. This, says Calamandrei, "sarebbe una vera e propria rinuncia ad una parte della nostra sovranità."⁵²⁷

Complimenting the Subcommittee on the wording of the third clause, Ferdinando Targetti (Psi) then asks a very pertinent question: what if a bilateral agreement between the two contracting parties cannot be reached? Does it come under normal constitutional revision rules as laid down by the Assembly? In which case a revision would have to be given two readings at least three months apart and passed by both houses; and on the second reading by an absolute majority in both houses. Even then if one fifth of each house requests it, the article could be put to a public referendum for resolution. But this cannot happen simply because the Dc party insisted on including the word 'bilateral'.⁵²⁸

Politically, Vittorio Orlando (Udn) has no qualms about including the Lateran Pacts in the Constitution, but on a technical level he says: "l'includere qui una renuncia al diritto sovrano di denunciare un trattato, mi sembra che costituisca un limite della sovranità (ie for the State)."⁵²⁹ So technically he accepts that inclusion of the Pacts would mean limiting State sovereignty, but politically he is quite prepared to allow it.

Rossi (Psli) admits to a somewhat anodyne ambition – he hopes to be witness to the creation of a free Catholic Church and a lay state in Italy:

con il vostro concorso, onorevoli colleghi democristiani, e nel supremo interesse dei più veri ed alti valori religiosi, facciamo in modo che quella vasta ombra protegga e conforti il cuore dei cattolici italiani, ma lasci indipendente e al sole, nella pienezza della sua vitale, sovrana, libertà e dignità, lo Stato italiano.⁵³⁰

⁵²⁶ Ibid.

⁵²⁷ CRAC, vol. 1, p. 161.

⁵²⁸ Ibid., p. 432-3.

⁵²⁹ Ibid., pp. 299-300.

⁵³⁰ Ibid., p. 416.

This is perhaps the most eloquent expression of those *laici* who, not prepared to pursue the question of sovereignty according to a strict juridical logic, for reasons of political compromise were prepared to ‘hope for the best’.

(iv) The diarchy theory

A consequence of the sovereignty debates, the diarchy theory has its roots in the idea of Church and State being two independent, sovereign entities with equal status and jurisdiction over the same territory: Italy. The arguments for it developed in isolation throughout the course of the debates, but were only collated as a coherent theory by De Gasperi in a quite remarkable speech he made to the Assembly towards the end of its deliberations on Church/State relations. To put the theory properly into context, I will begin by looking, in brief, at some of the ideas behind De Gasperi’s theory.

Constituent Assembly

Amerigo Crispo (Udn) examines the significance of the Lateran Treaty and the independence it gives the Church. The creation of Vatican City State allowed the Church to operate at an international level as a recognised international body, with powers to regulate its relations with other States by means of concordats. Having established in Article 5 (draft) of the Constitution that the State and the Catholic Church are independent sovereign bodies, Crispo asks how then can what amounts to a foreign State have an influence over the Constitution of another State? He claims that, “si pongono nella Costituzione due sovranità che evidentemente non possono coesistere.”⁵³¹ However, Riccio (Dc) argues that they can and must co-exist and relations between them must remain governed by the Lateran Pacts. He maintains that the equal status of the two bodies is a necessary pre-requisite for the new Republican State and one that he claims has been approved by the Communist Party in their V Congress, and in the Assembly, by Togliatti himself and so

non parliamo perciò di spirito laico o agnostico – come l’ha definito l’onorevole Nenni – che, portato nella Costituzione, sarebbe la rinneazione della volontà della maggioranza ed il misconoscimento della libertà dei cattolici d’Italia. Il laicismo dello Stato è un postulato essenziale ed originale del Cristianesimo, giacché se gli uomini più non debbono dare a Dio quel che è di Cesare, più non debbono dare a Cesare quel che è di Dio; onde il dualismo dei supremi reggitori dell’umanità risulta ineliminabile. V’è la duplice sudditanza dei credenti. E vi è la duplice sovranità: quella della Chiesa e quella dello Stato. Il Cristianesimo ha iniziato subito il processo di

⁵³¹ Ibid., p. 367.

unione nella distinzione. Noi la distinzione la vogliamo; non vogliamo la contrapposizione e, tanto meno, l'eliminazione.⁵³²

Thus, by the time De Gasperi made his speech to the Assembly, the idea of two sovereign states (originally posited by Dossetti in the subcommission debates and crystallised in clause 1 of draft article 5), one with spiritual jurisdiction and one with temporal jurisdiction over the peninsula had become, if not wholly accepted by the *costituenti*, at least familiar to them. But De Gasperi does not start his argument at this point. He begins by examining the nature and significance of concordats, which, he says, have been the main tool used by the Vatican for negotiations with states for 900 years. Between 1080 and 1914, 74 concordats were signed, and from 1914 -1947 a further 25. Concordats have evolved over the centuries, but have recently lost much of their temporal content and have concentrated more on the spiritual. In this evolution towards the spiritual, they have become less antagonistic to the organisation of the State, instead taking on a more complementary role – a role that De Gasperi sees as essential to the well-being of the citizens of the State. The natural progression of this, according to De Gasperi, is a diarchy of the Vatican and the Italian State working in partnership to govern the spiritual and material needs of the Italian population: “è innegabile che vi è in questa evoluzione un progresso verso una più chiara distinzione della sfera d’influenza della Chiesa nei confronti dello Stato, verso il riconoscimento di una diarchia che garantisca la volontà delle due parti.”⁵³³

He suggests that this evolution of governance toward a diarchy is a continuing process, he questions the right of the Assembly to stop this process (i.e. by including neither the Pacts nor a mention of them in the Constitution) and declares his personal aim to fulfil his duty, in the task to which he has been appointed, “di consolidare, di universalizzare, di vivificare il regime repubblicano.”⁵³⁴ This speech was made by Prime Minister De Gasperi, not in some isolated context as a theoretical ideal, but in the Constituent Assembly, as the debates around final article 7 were drawing to a close, and in defence of the inclusion in the Constitution of the Lateran Pacts.

This intervention by De Gasperi is something of a historical conundrum, coming as it does from one who has enjoyed the reputation of being on the ‘liberal’

⁵³² Ibid., p. 385.

⁵³³ Ibid., p. 630.

⁵³⁴ Ibid.

wing of political Catholicism. Indeed he became leader of the Ppi with the ‘removal’ of Luigi Sturzo as leader, owing to the latter’s embarrassment to the Vatican in its relations with the Fascist regime. The Vatican had profound reservations *vis-à-vis* the Ppi’s policy on strict separation of Church and State, one which did not change under De Gasperi’s leadership. De Gasperi was, however, as a devout Catholic, given refuge by the Vatican during the fascist era, and this may provide some partial explanations for these statements on the ‘diarchy’, for which I have been unable to find any references by eminent Catholic commentators such as Scoppola and Giovagnoli. One possibility is that De Gasperi was trying to give renewed currency to a modern version of the ‘two swords’ (temporal and spiritual) theory. First devised by Pope Gelasius I (492-496), and revised in the so-called theocratic claims by Innocent III (1198-1216) and Boniface VIII (1294-1303), its historical demise was not matched by a parallel erasure in the Vatican’s historical memory. Thus De Gasperi’s reference to “un progresso verso un più chiara distinzione della sfera d’influenza della Chiesa nei confronti dello Stato” would be an attempt to bring the ‘diarchia’ more into line with the perspectives he supported during his years as a *popolare*.

This idea of a serious theoretical elaboration of the notion of ‘diarchy’ is, however, unlikely to persuade those scholars who have emphasised De Gasperi’s difficulties with the Vatican, who are more likely to stress the uncertainty of the Holy See’s continued support for the Dc, and De Gasperi’s constant fear of the creation of a right-wing ‘partito romano’ supported by the Vatican.⁵³⁵ To such commentators De Gasperi’s comments would be more likely to be seen as attempting to demonstrate his Catholic credentials to the Vatican.

However this may be, in response to De Gasperi’s call to vote for article 7 to consolidate the Republic, Nenni calls for a vote against for the same reason, because “per consolidare la Repubblica, bisogna fondare lo Stato e lo Stato non si fonda sul principio di una diarchia di poteri e di sovranità.”⁵³⁶

Indeed, according to even the Catholic jurist Ruffini, the idea of Church and State being two entities with equal status, identical powers and similar degrees of independence, with one looking after the body while the other looks after the soul is, in practice, a flawed notion. He says: “La teorica della coordinazione presuppone una divisione che non esiste se non allo stadio speculativo: gli individui sono

⁵³⁵ For an in-depth treatment of this, see A. Riccardi, *Il partito romano*, Brescia, Morcelliana, 1984.

⁵³⁶ *Ibid.*, p. 634.

naturalmente integri ed entrano integri nel rapporto sociale.”⁵³⁷ Ruffini takes the creation of the Papacy and the Empire as described by Dante in his *De Monarchia* as the starting point for the concept of Church and State as equal partners. But he says they are truly independent entities, one with temporal responsibilities, the other spiritual. He goes on to say that the Church has never received, neither from God nor from man, “l’autorità di mescolarsi nei negozi temporali e di dare autorità al principato civile [Rome]. Non l’ha avuta da Dio, perché le Sacre Scritture, l’Antico e il Nuovo Testamento, nulla dicono in proposito.” Any unification of the two powers (Church and State) would constitute a “fonte di pericoli e di danni, perché favorisce quella confusione tra il potere civile e il potere religioso, la quale, essendo contraria alla volontà divina, produce soltanto tristi conseguenze.”⁵³⁸

(v) Church and Dc pressure on the Assembly

The insertion of the Lateran Pacts was, as we have seen, the key issue for the Holy See, which “esigeva soddisfazione ‘costituzionale’ e delegava il conseguimento di questa vittoria di principio ai cattolici ed al loro partito.”⁵³⁹ However, in calling the insertion of the Pacts merely a ‘vittoria di principio’, Melloni is understating the importance somewhat: it was very much the substance of the Pacts that were needed in the Constitution to guarantee – as the Church saw it – its future stability. To this end, both during the period of Giuseppe Dossetti’s position as vice-secretary of the Dc party (from August 1945 until February 1946), and following the formation, with Fanfani, Lazzati and La Pira of *Civitas humana* in September 1947, he held regular meetings with his old friend Mons. G.B. Montini in the Vatican. During these meetings they discussed both the party’s activities and events at the heart of government.⁵⁴⁰ Moreover, Italy’s interim government had been liaising with the Vatican from as early as August 1944 when Meuccio Ruini, later President of the Commission of 75, made representations to Montini via Cardinal Ronca offering his assistance. Ruini was keen to be made aware of “i desideri della Santa Sede per poter – nei limiti del possibile – essere utile.”⁵⁴¹

⁵³⁷ Ruffini, *Relazioni tra Stato e Chiesa*, p. 181.

⁵³⁸ Ibid., pp. 183-4.

⁵³⁹ A. Melloni, (Ed.), *Giuseppe Dossetti: La ricerca costituyente (1945-1952)* Bologna, Il Mulino: 1994, pp.39-40.

⁵⁴⁰ Magister, *La politica vaticana*, p. 83.

⁵⁴¹ A. Riccardi, *Roma ‘città sacra’? Dalla conciliazione alla operazione Sturzo* Milano: 1979, p. 301.

Subcommission 1

In the subcommission, Church and Dc pressure was not as evident as in the full Constituent Assembly debates. There are, however, two examples: the first appeared to have been a *faux pas* by the young and eager Aldo Moro, keen to fulfil his party's duty with regard to the insertion of the Pacts. Having been irritated by a speech by Terracini, he accuses the latter of being deliberately provocative by suggesting that he (Moro) was questioning the validity of parts of the Concordat. He insists that they cannot *allow* details to get in the way of including the Concordat in the Constitution.⁵⁴² His unfortunate choice of words clearly suggests that the Dc was under pressure from the Church to ensure insertion of the Pacts. Secondly, Concetto Marchesi (Pci) claims that an article in the Constitution would not be sufficient to avoid an eventual wave of anti-clericalism, which the Communists would be the first to denounce. To avoid such an occurrence he suggests that nothing would be more beneficial than a reduction of the number of Vatican-inspired demands put forward by the Christian Democrats.⁵⁴³ Christian Democrats are obviously flexing their muscles, to the annoyance of the non-Catholic parties.

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Reiterating his objections to article 5 (draft) and its creation of a confessional State, Mario Cevolotto then attacks the Dc members of the Subcommissions for over-zealously imposing their ideas on the other parties, "sicché molte volte non sono aderenti alla via intermedia ed hanno troppo voluto tirare la corda."⁵⁴⁴ As we shall see, many such accusations were made during the course of the debates, although they had little or no influence on the Dc's determination to have its own way on the issues linked to Church/State relations.

Concetto Marchesi (Pci) says that clause 2 of article 5 has been considered by some to be an intrusion. The Communists think that the arguments can be resolved if they and the Dc party can reach an agreement:

I colleghi della prima Sottocommissione sanno che nessuno di noi ha mai pensato, ha mai sognato di chiedere la denuncia dei Patti lateranensi. Nostro proposito era ed è che la Costituzione . . . non sia impegnata fin da principio da norme, le quali continueranno a vivere fino a che le circostanze e la saggezza delle parti insieme lo permetteranno. Ma i colleghi democristiani

⁵⁴² CRAC, vol. 6, p. 155.

⁵⁴³ Ibid., p. 782.

⁵⁴⁴ CRAC, vol. 1, p. 210.

hanno voluto che questi Patti entrassero nel tessuto organico e vitale della Costituzione della prima Repubblica italiana.⁵⁴⁵

Scoppola compares Togliatti's declarations with those which the aide to the American ambassador to the Holy See, Myron Taylor, attributed to Monsignor Tardini in one of his memoranda destined for Secretary of State Marshall:

Mons. Tardini . . . mi ha detto oggi (20.03.1947) che egli crede fermamente che la nuova costituzione italiana attualmente in discussione, allorché sarà approvato nella sua forma definitiva, comprenderà un riferimento ai Patti del Laterano e confermerà la loro validità . . . Tardini ha aggiunto che non sarebbe sorpreso se i comunisti votassero a favore del proposto riferimento ai Patti del Laterano nella nuova costituzione poiché essi sono ansiosi di non compromettere i veri sentimenti del popolo italiano che è grandemente attaccato al Papa e alla fede cattolica.”⁵⁴⁶

The report is dated the day before Togliatti pledges his party's vote to the Dc. Is this evidence of Church pressure on the Communists? Compare this with the following assertion by Togliatti who claims that his amenable attitude towards the insertion of the Lateran Pacts was a position he was 'forced' to display during the debates of the Constituent Assembly. In a discussion at Rovigo a few days after the vote on Article 7, he said:

Ci hanno accusato . . . che noi questo voto l'abbiamo dato dopo essere venuti a patti col partito democristiano, e che non sta bene fare la Costituzione sulla base di questo compromesso . . . Qui devo dire esattamente le cose come stanno. Nel Partito della Dc vi erano dei deputati più o meno autorevoli i quali sinceramente mi hanno manifestato il desiderio che noi votassimo per l'articolo 7. Essi dicevano: voi comunisti votando per questo articolo darete un contributo alla pacificazione del Paese, all'unità della classe lavoratrice, unità che sta a cuore tanto a noi che a voi. Ma questo non era l'atteggiamento della direzione del partito democristiano. Abbiamo avuto l'impressione, ed io non voglio essere maligno, che essi avessero il desiderio che noi respingessimo l'articolo. Abbiamo avuto l'impressione che molti avessero il desiderio di trovare il motivo per accusare il Partito Comunista di essere il nemico della religione. Non vi era quindi possibilità di venire a compromessi col partito democristiano.⁵⁴⁷

This statement, suggesting that the Pci wished to avoid falling into a Dc trap, may also help to explain the Communists' shift in attitude to the insertion of the Lateran Pacts from intransigence to acceptance.

⁵⁴⁵ Ibid., p. 410.

⁵⁴⁶ Cited in Scoppola, *La Repubblica dei partiti*, p. 146.

⁵⁴⁷ Interview with Togliatti: *I comunisti hanno sventato i tentativi di guerra religiosa*, in *L'Unità*, 01.04.1947; cited in Martinelli, *Storia del Partito Comunista italiano*, p. 277.

Even after all the argument and attempted persuasion of the centre-right parties, Ferdinando Targetti (Psi) still does not understand why the Lateran Pacts have to be included in the Constitution.

Che questi Patti esistano è una realtà. Se la democrazia cristiana si accontentasse, pertanto, della constatazione della sussistenza attuale di questi Patti, credo non troverebbe nella sua pretesa alcun ostacolo. Sarebbe la constatazione di un fatto storico. Ma qui si tratta di ben altro. Parlo - ripeto - col linguaggio di chi non abbia troppa confidenza né con la storia né col diritto, e mi domando: perché questa insistenza della democrazia cristiana ad includere nella Carta costituzionale il richiamo dei Patti lateranensi? Quando si tiene presente che l'autore, il creatore di questa formula è stato l'onorevole Tupini, si capisce che la ragione ci deve essere, anche se non si vede da parte di un osservatore superficiale ed ingenuo; la ragione ci deve essere e deve avere un grande significato."⁵⁴⁸

Targetti clearly believes that Tupini's contacts with the upper echelons of the Vatican hierarchy suggest a hidden agenda underlying the Dc's determination to have the pacts included.

Moro (Dc) recalls Togliatti's wish that the Constitution should not be merely an ideological document. He says: "Preoccupati, come siamo stati e come siamo, di realizzare attraverso la nuova Costituzione italiana uno strumento efficace di convivenza democratica, noi non abbiamo mai cercato e neppure adesso cerchiamo di dare alla Costituzione un carattere ideologico."⁵⁴⁹ This was patently not believed by the *laici* and Francesco Saverio Nitti (Udn) is keen to highlight the religious idealism embarked on by the Dc party and rebukes them for attempts at subliminal proselytism:

In questi giorni vi è stato in quest'Aula un risveglio strano ed inatteso di ideali religiosi. Realmente sincero? O prevalentemente politico? Io non posso dire. Abituato alle antiche Assemblee, essendo vissuto all'estero ed avendo frequentato assemblee politiche di diverse natura, non ho mai veduto, come in quest'Aula nei giorni passati scoppi di religione, al punto che l'onorevole La Pira, con fluidità di parola e con abbondanza di sentimento, ha finito il suo discorso con un inno alla Vergine e una preghiera, cosa largamente apprezzabile, ma che non era mai stata fatta in nessun'Assemblea politica del

⁵⁴⁸ CRAC, vol. 1, p. 432. A member of Catholic Action from his youth, Umberto Tupini was a member of the *Movimento cristiano sociale* in Rome and a founder member of the *Ppi*. He stayed out of politics for most of the Fascist period and then worked with Giuseppe Spataro and Alcide De Gasperi to form the Dc in 1943. Between 1947 and 1950, he was the Ministro dei lavori pubblici. See F. Traniello and G. Campanini, *Dizionario storico del movimento cattolico in Italia: 1860-1980*, Torino: Marietti, 1981, pp. 865-6.

⁵⁴⁹ Ibid., p. 369.

nostro Paese e che non risponde al carattere politico della nostra istituzione.⁵⁵⁰

Piero Calamandrei feels the need to make his party's position clear: they are against article 5 and for this reason they will vote accordingly. He says this because he wants to distinguish himself and his party from those who are against article 5 and for this reason will vote for it!⁵⁵¹ He strongly criticises comments made by La Pira who "si lamentò che questa discussione che si svolge qui sui Patti lateranensi fosse quasi una irreverenza verso la Chiesa, e disse: 'Date il voto favorevole a questo articolo per una ragione di delicatezza verso la Chiesa, che ha tante benemerenze'."⁵⁵² There is no room in Calamandrei's sense of juridical correctness for undermining its requirements through mystificatory appeals to the labyrinthine fog of delicate sentiments.

Calamandrei then discusses Togliatti's quotation from a Gregorian teaching manual that, where possible, the Church prefers to deal with governments who do not have to seek approval from a representative body.⁵⁵³ He recognises that it cannot be pleasant for the Church to have such matters discussed in public,

ma non siamo stati noi che l'abbiamo provocata. Chi può aver mancato di delicatezza verso la Chiesa provocando questa discussione che non era né necessaria né utile, non siamo stati noi, amici democristiani; ma dal momento che questa discussione si deve fare, noi abbiamo il dovere di dire in proposito, con tutto il rispetto ma con tutta l'energia, il nostro pensiero.⁵⁵⁴

All the pressure exerted on the Assembly to include the Lateran Pacts reaches its apogee in a speech by Prime Minister Alcide De Gasperi (Dc) on 21st March 1947. When De Gasperi addressed the Constituent Assembly, many deputies were expecting his themes to encompass the new Republic, the assembly members' duty towards it and the honour and responsibility of their contribution to it. However, he actually spoke at length in defence of the proposed article 7. This, despite the position of formal impartiality he might have been expected to display, shows how important the article was to the Dc party and indeed the Catholic Church.

Whatever the reasons, whether it is out of conviction or Vatican pressure, it is clear that at what he sees as a crucial point in the debate, De Gasperi puts to one side the traditional clear separation of Church and State of the *popolare* tradition in a

⁵⁵⁰ Ibid., p. 486.

⁵⁵¹ A sarcastic dig at the Communists.

⁵⁵² CRAC, vol. 1, p. 513.

⁵⁵³ See section B2 (viii) of this thesis.

⁵⁵⁴ CRAC, vol. 1, p. 513.

highly partisan defence of Vatican claims. He argues that it is due to the instrumental part played by Christianity through the ages that necessitates a close liaison between the State and the Church and thus no-one can suspect or lack confidence in a collaboration with the Church.⁵⁵⁵ De Gasperi cites the oath sworn by bishops at their inauguration, pledging allegiance to the Italian State (recently amended by the Vatican following the declaration of the new Republic) and suggests that the State owes the Church a similar vow of allegiance by accepting the Lateran Pacts as part of the Constitution. He claims that the issue at stake is greater than squabbles over individual articles of the Concordat not aligning with the Constitution: “Si tratta della questione fondamentale: se la Repubblica . . . accetta l’apporto della pace religiosa che questo Concordato offre; badate bene, Concordato che nella premessa è dichiarato necessario complemento del Trattato che chiude la Questione romana.”⁵⁵⁶

The rhetoric becomes more inflammatory when he warns that it will not be the Dc party that reopens the political battle over the Pacts if the Assembly voted against their inclusion, “ma l’aprite voi, o meglio, aprite in questo corpo dilaniato d’Italia una nuove ferita che io non so quando rimarginerà.”⁵⁵⁷ He suggests that Basso’s amendment would have been acceptable if the present discussion had not taken place and the original Dc proposal for the article had been accepted at the end of deliberations in the subcommission. However, he claims that since the other parties have insisted on pushing for a discussion of the merits of the proposed article, then the Dc has been forced to take this strong stance, a claim which annoys Tonello (Psi) who shouts that it was the Dc who wanted to continue the debate.

What pressures were behind De Gasperi to make this unprecedented intervention? Perhaps Nenni has some answers in his equally bullish response. An element of De Gasperi’s speech that worried Nenni was his suggestion that Basso’s amendment could have been accepted: it could have and should have according to Nenni. On the same point, Togliatti is scathingly critical: “ciò che ella ha detto è una svalutazione diretta dell’Assemblea. I dibattiti che precedono preparano i dibattiti nell’Assemblea; ma qui si decide ogni questione, qui ogni formula deve essere pesata, valutata, accettata o respinta. In questo sta la sovranità della nostra Assemblea.”⁵⁵⁸ Moreover, De Gasperi’s appeal to uphold the *pace religiosa* has done nothing to change Nenni’s mind about voting against article 7: “Siamo

⁵⁵⁵ Ibid., p. 629.

⁵⁵⁶ Ibid., p. 631.

⁵⁵⁷ Ibid.

⁵⁵⁸ Ibid., pp. 637.

profondamente convinti che la pace religiosa è un bene altamente apprezzabile, ma per noi, la garanzia della pace religiosa è nello Stato laico, nella separazione delle responsabilità e dei poteri.”⁵⁵⁹ He considers the intransigence of the Dc party to be an explicit invitation to battle over the Pacts, which he says the Psi neither seeks nor accepts.

Nenni is also concerned about the root of the Dc’s reticence to reach a compromise over the Pacts: he is convinced that their intransigence stems from the pressure exerted on the Assembly by Catholic Action and by the Vatican’s official newspaper, *L’Osservatore Romano*, which has published articles threatening that if the Socialists and the other parties of the Left voted against article 7, then they would risk undermining the *pace religiosa* and even reopening the Roman Question.

È L’Osservatore Romano che, ricollegandosi all’interpretazione data da Pio XI al nesso fra Trattato e Concordato (considerati in funzione l’uno dell’altro) e all’interpretazione fanaticamente confessionale che del contenuto del Concordato fu data nelle discussioni del 1929, ha smisuratamente allargato il campo del dibattito e riproposto il problema della questione romana che l’immensa maggioranza degli italiani considera chiuso e che resterà chiuso qualunque sia il voto che stiamo per dare.⁵⁶⁰

This, he says, is why his party must vote against article 7.

As for Communist reaction to De Gasperi’s speech to the Assembly, it is both the tone and substance of it that Togliatti is most critical of:

avremmo voluto che l’onorevole De Gasperi non parlasse qui, come ha parlato, quale esponente del Partito democristiano o, ancora di meno, come esponente della coscienza cattolica, la quale non si estrinseca né si può estrinsecare in un solo partito; ma che, per tramite suo, tutto il nostro dibattito fosse guidato da un rappresentante autorizzato di tutta la Nazione, cioè dal nostro governo, democratico e repubblicano.⁵⁶¹

De Gasperi makes a statement in his speech which must have strained the credulity of the Assembly: while a large part of the clergy worry about the rise of anticlericism in Italy, and while a great deal of pressure is being exerted (on the

⁵⁵⁹ Ibid., p. 632.

⁵⁶⁰ Ibid., p. 634.

⁵⁶¹ Ibid., p. 638. This is an important point to make regarding De Gasperi’s only appearance in the Assembly: it could have been a point of reference for the work of the Assembly in general, an indication of the support and encouragement of the government for the work they were undertaking on behalf of the Nation at the head of which was De Gasperi himself. But this international statesman, as undoubtedly he already was, seemed to have succumbed to party political and Vatican pressures to defend at all costs the insertion of an international treaty, which all parties agreed was under no threat at all, into their Republican Constitution, the principal beneficiary of which was effectively a foreign, sovereign state.

Assembly), “la Chiesa in Roma, il Pontificato rimase neutrale, seguendo una linea di saggezza che non sempre in altri paesi fu mantenuta dai rappresentanti ecclesiastici locali.”⁵⁶² That this was not the case is evident, and is of grave concern to Togliatti, who seeks the reasons for it in the pages of the official voice of the Vatican, *L'Osservatore Romano*.⁵⁶³ However, he does not doubt that such articles constitute the Church wielding its considerable influence over the future political shape of the Italian democratic republic, nor that the threat of non-insertion of the Pacts resulting in losing the *pace religiosa* is a fabrication of the Vatican keen to secure for itself a key role at the helm of that democracy, nor that such interference undermines the very essence of that democracy. Instead the Pci, eager not to be the cause of a rupture of the *pace religiosa*, accepts the threats of the Church at face value and declares its intention to vote with the Dc.⁵⁶⁴ Togliatti belies the alleged ‘doppiezza’ for which he has become (in)famous. He knows that he will be reviled by other forces of the left. But he declares frankly that he does not believe in the arguments of the Catholics, and that he is fully aware of the Vatican’s tactics. He perceives clearly, however, that it has a hegemony over the Catholic population which could take the nation into a totally unnecessary and destructive battle, in which he refuses to engage. His opponents on the left may well have disagreed with his decision, but his reasons are clear.

Enrico Molè (Pdl) is one such opponent. He starts, however, with a critique of De Gasperi’s party-political contribution to the debate. He claims that the Dc leader brought the argument down to its lowest and, from the point of view of a risk to the *pace religiosa*, most provocative level. Molè paraphrases De Gasperi’s approach to the problem:

⁵⁶² Ibid., p. 630.

⁵⁶³ Ibid., p. 638. The articles are taken from the editions of 13th March, 1947: “Simile omissione (*the failure to refer to the Pacts in the Constitution*) significherebbe nella realtà . . . non un silenzio, non una lacuna, ma una minaccia, un pericolo. La minaccia alla pace religiosa, il pericolo di vederla turbata per la possibilità che lo sia.” 19th March, 1947: “Questo eventuale diniego (*again a reference to the lack of an explicit mention of the Pacts*), il sostenerlo necessario, il presagirlo possibile, turba già la pace e l’unità spirituale del popolo, il quale può ben pensare fin d’ora che tale pace, tale unità è minacciata per l’avvenire, se al suo unico fondamento si vuol . . . togliere la sicurtà costituzionale.” 20th and 21st March, 1947: “Per quanto si protesti fin d’ora di non voler cadere nell’anticlericalismo di maniera, né in una lotta contro la religione, tuttavia (se si esclude dall’articolo 5 il richiamo costituzionale ai Patti lateranensi), pace religiosa . . . certissimamente non sarà, purtroppo.” 22nd March, 1947: “Se realmente si vuole che nessun lotta a carattere religiosa turbi il faticoso rinnovamento della Patria, perché mai così manifesto timore di riaffermare, in un momento e in un documento solenne, l’efficacia di Patti sottoscritti non soltanto tra un governo ed altro governo, tra uno Stato ed altro Stato, bensì tra il popolo italiano e la sua fede e la sua Chiesa?”

⁵⁶⁴ Ibid., p. 640.

Siete religiosi o atei? Riconoscete o disconoscete la validità del messaggio cristiano? Intendete o non intendete la importanza del problema religioso? Vi ponete o non vi ponete in opposizione col Pontefice? . . . Volete riaprire la questione romana? Volete iniziare di nuova la lotta religiosa? Votando contro l'articolo 7, voi accendete le fiamme malefiche di una guerra di religione.⁵⁶⁵

But the danger does not end with De Gasperi: Molè considers Togliatti's response to this speech to be even more harmful, "perché ha dato riconoscimento a questa impostazione pericolosa."⁵⁶⁶ He strongly denies that a *guerra religiosa* would be the outcome of a vote against the insertion of the Pacts. Thus, he says, his party's vote should not be taken as an insult to the Catholic faith, nor does it mean that they want to ignite a religious war "esiziale pel nostro Paese; né voi avreste, pel nostro voto contrario, il diritto di dichiararcela."⁵⁶⁷

There were many such criticisms of De Gasperi's speech, and of Togliatti's reaction to it. Alberto Cianca (Autonomista) is also critical of De Gasperi:

Respingere l'inserzione dei Patti lateranensi nella Costituzione equivarrebbe per lui a compiere un atto di ostilità contro la fede cattolica. È facile replicare che quella fede e la morale evangelica non sono in giuoco. Un buon cattolico rimane tale anche se postula l'esigenza che i Patti concordatari siano messi in armonia con la Costituzione.⁵⁶⁸

However, Umberto Calosso (Psi) is slightly less circumspect in his view of what he claims is Togliatti's purely tactical voting with the Dc. "Il discorso di Togliatti è un'umiliazione per tutti i cattolici italiani,"⁵⁶⁹ in not offering them at least the dignity of honest opposition. Randolfo Pacciardi (Pri) in declaring his party's intention to vote against the Pacts, takes another position on behalf of the citizens of Italy when he questions the appropriateness of such a debate when the country is faced by massive social and economic problems following the war. He asks why the Dc are insisting on the inclusion of the Pacts in the Constitution.

Questa pretesa non l'aveste fatta nemmeno col fascismo che era disposto a concedere tutto. La Chiesa non ha preteso che i Patti del Laterano fossero inclusi nello Statuto del regno di allora. (*Commenti*). Non c'è stata mai questa pretesa, per nessuno Stato del mondo, nemmeno per la cattolicissima Irlanda. Perché con la forza del numero avete imposto questa pretesa alla nascente Repubblica italiana? . . . Io spero che la risposta non sia sottintesa nelle dichiarazioni che abbiamo testé ascoltato dall'onorevole De Gasperi, che in

⁵⁶⁵ Ibid., p. 647.

⁵⁶⁶ Ibid., p. 642.

⁵⁶⁷ Ibid., p. 648.

⁵⁶⁸ Ibid., p. 649.

⁵⁶⁹ Ibid., p. 652.

forma molto velata e molto serena . . . associava stranamente questo voto, con la sicurezza e la stabilità della Repubblica.⁵⁷⁰

(vi) Public interest in the Pacts

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Ottavio Mastrojanni (Uq) says that if it was a government that we must now detest that brought about the historic-spiritual event that was the Lateran Pacts, then the paternity of such an event which brought about the *pace religiosa* must now be bestowed on the Italian people who clearly aspire to see the inclusion of this fundamental pact between Church and State in the Constitution. He is at this point making the same questionable historical assumption as many others in the Assembly, namely that the Italian public was well-informed on the significance of the Pacts, and that it was as central an issue in their minds as it was in that of many of the Catholic deputies in the Assembly. As regards the contradictions between the Pacts and the Constitution, he reiterates that they can be easily eliminated so that “l’inserzione della esistenza di questa pace religiosa tra il popolo italiano e la Chiesa Cattolica Apostolica Romana rappresenta una conquista spirituale del nostro popolo.”⁵⁷¹

Pietro Mancini (Psi) clearly believes that the Dc is overplaying the ‘coscienza popolare’ card. He speaks robustly on behalf of the people of Italy who are enduring hardships and deprivations in the aftermath of the war:

Che volete che il popolo si interessi dei Patti lateranensi, che non conosce e che dovrebbe tenere soltanto in gran dispetto, perché firmati da Mussolini! Io li ho letti soltanto quando si discusse la questione dinanzi alla prima Sottocommissione. Pensate sul serio che nel momento in cui tante doglianze e tante necessità rendono difficile la vita, possa il popolo affamato e disoccupato interessarsi dei Patti lateranensi?⁵⁷²

He says that the Pacts “servono soltanto ad imprimere alla Costituzione il crisma di un partito. Comunque io non saprei, né potrei spiegarmi come possa conciliarsi il principio dell’eguaglianza del cittadino e della sovranità popolare con il contenuto politico, etico, giuridico dei Patti lateranensi.”⁵⁷³

The Dc could have countered this important point if it had been able to provide some evidence of its repeated claim about expressing the wishes of the vast

⁵⁷⁰ Ibid., p. 653.

⁵⁷¹ Ibid., p. 187.

⁵⁷² Ibid., p. 474

⁵⁷³ Ibid.

majority of the Italian people. On this score, however, it was in some difficulty, knowing that more than half of the population had not voted for the Dc, and that many baptised Catholics were not practising their faith. What is surprising, perhaps, is the lack of even anecdotal evidence coming from the Catholics. It is difficult to avoid the conclusion, given the clear importance of the issue to the Catholics in the Assembly, that they themselves suspected that the issue was not in reality at the forefront of the minds of the vast majority of the population, and that simple assertion was the best approach in debate.

(vii) The ‘termini concordatari’ issue

This issue stems from a compromise proposal to clause 2 proposed by Togliatti which suggested that Church State relations be governed by ‘termini concordatari’. This was in order not to incorporate the Pacts, as such, into the Constitution.

Subcommission 1

As mentioned above, during the subcommission debates, the Pci were still espousing hard-line tactics in relation to the Pacts. Concetto Marchesi illustrates their position very clearly: Togliatti’s proposal (‘i rapporti tra lo Stato e la Chiesa cattolica sono regolati in termini concordatari’) “rappresenta il limite estremo di ogni concessione che può essere fatta in materia ai Commissari di parte comunista.”⁵⁷⁴

However, Giuseppe Grassi (Udn) points out that Togliatti’s proposal has not mentioned the Lateran Treaty, which he claims is essential and cannot be omitted from the article.⁵⁷⁵ However, Cevolotto recognises that the Concordat includes material of a more constitutional nature, but considers that any mention of it should be limited to the terms of the proposal by Togliatti (ie “in termini concordatari”) so that the State remain free to amend clauses as it deems necessary, either by means of bilateral agreement or even unilaterally where no such agreement can be reached. He mentions the Buonaiuti case which caused “una vera indignazione in tutte le coscienze libere.”⁵⁷⁶

Umberto Merlin tries to defend the Church by saying that the Buonaiuti case was the only one in which Article 5 of the Concordat was applied. (At which point Togliatti recalls a second case.) However, as Cevolotto points out the number of

⁵⁷⁴ CRAC, vol. 6, p. 782.

⁵⁷⁵ Ibid.

⁵⁷⁶ Ibid., p. 783. This was the case of a dismissed priest, Ernesto Buonaiuti, deprived of civil rights by the Church’s insistence on the priority of Canon Law in the case of clerics.

cases is irrelevant: “quando la libertà è ferita in una persona, tutta la libertà è ferita.” He thinks the Vatican should, sooner or later, modify this article, and if it doesn’t, then the State should be free to do so. He feels that other articles should also be revised, such as the question of jurisdiction in matrimonial cases “che è una vera e propria rinuncia da parte dello Stato alla sovranità nella più gelosa delle sue funzioni.”⁵⁷⁷

Terracini (Pci) is interested by Mortati’s proposal, that the second clause should be completely suppressed. The fact that the Church and State are independent and sovereign necessarily means that relations must be governed by a concordat. He questions Mortati’s view of the consequence of Togliatti’s proposal as being the abrogation of the Pacts. He and his party do not want that. He recognises that it is necessary to speak of relations conducted on a concordatory basis, but not, as Moro said, because the Italian people want to know that relations are based on the concordat currently in force. He says that what is important to Italians is that relations between Church and State are run on a basis of harmony and reciprocity.⁵⁷⁸ It is therefore better to talk of concordatory pacts (i.e. in general) and not specifically about the Lateran Pacts. The Constitution contains norms, it does not make concrete statements of fact, as has been done in the first clause. The new Italian democracy enshrines the same rights and position as other states. He argues that it is evident that one cannot refer to a territorial treaty in the new Constitution, and that there is no need to mention Vatican City State or the Concordat.⁵⁷⁹

Giuseppe Grassi (Udn) comments that Togliatti’s proposal “in termini concordatari” only takes the Concordat, and not the Treaty, into account. He claims it would be more logical to exclude the Pacts completely from the Constitution, but the moment one accepts as constitutional the principle that Church/State relations be regulated “in termini concordatari” then he cannot see why the Lateran Pacts, being still in force, should not govern those relations. The agreement to modify the Pacts in future should remove every other concern about their inclusion.⁵⁸⁰ Clearly, however, this did not satisfy the left.

⁵⁷⁷ Ibid.

⁵⁷⁸ Ibid., p. 154.

⁵⁷⁹ Ibid., p. 155.

⁵⁸⁰ Ibid., p. 156.

Bassano (Pdl) concedes that he is not against a reference to Church/State relations being governed by ‘patti concordatari’, as in Togliatti’s proposal. This would allow the State to continue relations with the Church without creating any disparity which might in time harm such relations.⁵⁸¹

Quoting the eminent Dc lawyer Costantino Mortati, Cevolotto points out that, in spite of a spirited argument in favour of the insertion of the Pacts into the Constitution, Mortati also accepted that a proposal such as that put forward by Togliatti would offer sufficient guarantees for the longevity of the Pacts as an agreement in its own right. He emphasises that none of the left-wing parties consider it necessary to embark on a process of amending the Pacts – a process which they consider would have been politically inopportune at that time – but neither do they consider it prudent to rule out any future amendments to the Pacts, nor would they even consider attempting this without the consent of both interested parties.⁵⁸²

Ugo Della Seta (Pri) presents the following two clauses as an amendment to article 5, clause 2:

I rapporti tra lo Stato e ogni singola Chiesa sono disciplinati per legge.
Per i rapporti tra lo Stato e la Chiesa cattolica potranno essere mantenute, in termini di concordato, quelle norme dei Patti lateranensi che, nello spirito e nella lettera, non contrastino con le norme fondamentali della Costituzione repubblicana.⁵⁸³

Here Della Seta brings the idea of Church/State relations into the realm of concrete legislation: continuous contact between institutions operating within the same territory is essential, but any relations must be regulated. Since such regulation is not appropriate for inclusion in a Constitution, the only option is for it to be governed by law.

The situation with the Catholic Church does, he admits, need particular attention. The key to this third clause is his interpretation of ‘in termini di concordato’. To the word ‘concordato’ he gives not only juridical and political significance, but also psychological and moral significance: “Un concordato non si riduce all’incontro di due volontà; queste volontà debbono essere animate da verace

⁵⁸¹ CRAC, vol. 1, p. 536. The Dc party was not happy with any other wording, such as ‘Patti concordati’ or ‘principio concordatari’ simply because those options would not specifically require the Pacts to be part of the Constitution – a matter which, as has been shown, was fundamental to their vision for the new Italy.

⁵⁸² Ibid., p. 545.

⁵⁸³ Ibid., p. 617.

spirito di concordia.”⁵⁸⁴ The failure of Togliatti’s proposal, even in amended form, to find acceptance was once again a demonstration of the Dc’s doggedness and determination, rather than of persuasive juridical argument.

(viii) Fascist origins

Subcommission 1

One of Togliatti’s initial arguments against inclusion of the Pacts was that they were signed by a fascist government and have come to be considered as one of the greatest remnants of the fascist regime. However, Corsanego (Dc) claims that this is a dangerous statement because if the Pacts correspond to the wishes of the majority of Italians, then the type of government of the day is irrelevant.⁵⁸⁵ Corsanego ignores the fact that the Pacts were signed in secret *without* the knowledge of the Italian people.

Dossetti criticises Togliatti’s attempts to reduce the significance of the Pacts, as Togliatti said he would try to in his speech on 21st November 1946. As for Togliatti’s ‘fascist document’ remark, Dossetti agrees with Corsanego, and adds that there are many examples of pacts that take on a different aspect when they appear to contrast with a specific political line, stating that the Italian people have warmed to the Pacts, particularly considering their unsuccessful historical precedents.

Emilio Lussu (Psa) would prefer to see relations between Church and State mentioned briefly in a preamble to the Constitution, since Catholicism is the religion of the vast majority of Italians and the political action of the State is inspired by this reality. He thinks the Pacts should not be included in the Constitution because they were generated by a Fascist government without being discussed and approved by the Italian people.⁵⁸⁶

According to Giuseppe Grassi (Udn), it is not correct that the conclusion of the Pacts was reached only as a consequence of fascism: true the event had been concluded during this period, but the desire among Italian politicians greatly preceded fascism. Grassi claims that since unification attempts had been made by successive governments to find a solution, attempts which encountered resistance especially from within the hierarchy of the Church, which had its own claims on Rome and on the old pontifical State.

⁵⁸⁴ Ibid.

⁵⁸⁵ CRAC, vol. 6, p. 785.

⁵⁸⁶ Ibid., p. 155.

Ottavio Mastrojanni (Uq) cannot see why the fact that the Roman Question was solved during Fascist times should diminish its significance. What his party wants to emphasise is that the spirituality of the Italian people found a tangible satisfaction in the signing of the Pacts. As trustees of that spirituality, he says they have a duty not to reject something that the Italian people have unanimously approved and on no occasion have demonstrated that they do not want to observe.⁵⁸⁷

Mastrojanni rejects Lussu's argument, saying that its natural conclusion would be to throw out all legislation passed during Fascism because it has no juridical or moral value. As victim of either disinformation or of a staggering optimism, he claims that the government is looking at all the old laws and abrogating any that do not correspond to the current governmental structure. In the same way, he says that they have the possibility of re-examining the Lateran Pacts and updating them.⁵⁸⁸ He also criticises the republican Perassi's argument: if it is true that Treaties continue to maintain their validity and force above and beyond any Constitution and must be regulated by the agreements laid out in them, it is also true that we cannot consider Vatican City State and the Catholic Church as being on a par with any other State.⁵⁸⁹

Constituent Assembly

In response to Mastrojanni's claim that it would be ridiculous to throw out all Fascist legislation, Cevolotto says, in the Constituent Assembly, "Non dobbiamo dimenticare che noi viviamo in un momento di trasformazione dello Stato in cui è necessario rinnovare tutta la legislazione precedente."⁵⁹⁰

Mastrojanni continues his arguments in the Constituent Assembly. He considers it to be essential to have the relationship between Church and State clearly outlined in the Constitution. As regards the remarks of those who consider it to be incongruous and the work of the Fascists, "sarebbe grave errore attribuire al Governo fascista tanta grandiosa concezione negli eventi storici e nello comprensione dello spirito nazionale."⁵⁹¹ He seems to be questioning to what extent, if any, Mussolini's government had any say in the process leading to the signing of the Pacts. The

⁵⁸⁷ There are three points to be made here: Italians had no idea that the Pacts were being negotiated until after they were signed; secondly, apart from the principle exponents and a tiny circle of negotiators no-one knew what was contained within the Pacts; and thirdly, at no time did either the Church or government put the Pacts to a popular referendum.

⁵⁸⁸ Ibid., p. 156.

⁵⁸⁹ The implication here is that they are juridically superior to other states.

⁵⁹⁰ CRAC, vol. 1, p. 213.

⁵⁹¹ Ibid, p. 186.

spiritual divide between the Italian people and the Catholic Church was, he says:

“una situazione matura che era impellente nella coscienza collettiva del popolo italiano, il quale da tempo si dibatteva.”⁵⁹²

Indeed Stefano Riccio goes further: he responds to an accusation by Tonello (Psi) regarding the Fascist origins of the Pacts by claiming that because many of the articles in the Treaty and Concordat begin with the word ‘Italia’ they have nothing whatsoever to do with Fascism: “I Patti lateranensi non sono una imposizione, né una espressione del fascismo; sono la libera conquista di una coscienza popolare, che volle ricomporre un dissidio intimo, eliminando contrasti che venivano sfruttati da speculatori politici, avvelenatori della libertà.”⁵⁹³ In fact, Orlando (Udn) takes the responsibility for concluding the Pacts himself:

sono stato io l'autore o, dico meglio, colui che consentì al patto centrale dell'accordo e della pacificazione. Questo ormai è storico: quella che è la base degli Accordi lateranensi era stata definitivamente conclusa con me. Il mio non fu un tentativo, come tanto ne registra la storia: effettivamente a Parigi, nel giugno 1919, tra la fine di maggio e i primi di giugno, quegli accordi poterono dirsi conclusi.⁵⁹⁴

Thus, his argument for inclusion of the Lateran Pacts in the Constitution is that the basis of the negotiations was agreed, though unpublished by mutual consent, between himself and Mons. Cerretti, at Paris in June 1919 under the Liberal Government. Having said that, the Pacts as they emerged in 1929, with their massive concessions to the Church, would have borne little resemblance overall to the agreement made in 1919 and so Orlando's claim must be treated with scepticism.

Nenni points out that, under Mussolini, both the fascist Regime and the Church needed the Treaty and Concordat: the former to make use of the Church as an ‘instrumentum regni’ and the latter to protect itself from Fascist aggression. The reasons for such action on both sides was understandable at the time, “ma oggi, credete davvero, onorevole colleghi, che per assicurare il prestigio della religione e del Vaticano sia necessario che il Sommo Pontefice sia sovrano sui 44 ettari di territorio che costituiscono lo Stato del Vaticano?”⁵⁹⁵ This appears to be a thinly veiled threat by Nenni to the Vatican's territorial possessions. If this is the case, it would have been very unhelpful to his cause.

⁵⁹² Ibid.

⁵⁹³ Ibid., p. 384. In fact, even a cursory reading of the Pacts will show that they were not ‘an imposition nor an expression of fascism,’ but a powerful demonstration of Vatican influence.

⁵⁹⁴ Ibid., p. 299.

⁵⁹⁵ Ibid., p. 306.

Togliatti addresses the issue of the origins of the Pacts in a very wide-ranging speech. He makes one point early on which, although made in the context of the political nature of the Constitution, is also relevant to the debate on the Lateran Pacts, and indeed to the Catholic hegemony of post-war politics in Italy. He says:

Il compito che dobbiamo assolvere oggi . . . si tratta di distruggere fino all'ultimo ogni residuo di ciò che è stato il regime della tirannide fascista; si tratta di assicurare che la tirannide fascista non possa mai più rinascere; si tratta di assicurare l'avvento di una classe dirigente nuova, democratica, rinnovatrice, progressiva.⁵⁹⁶

Yet another question worrying the Communists was one that Togliatti himself raised in a previous speech to the Assembly when he spoke of an eventual renewal of the Pacts to remove the signature of fascism and to introduce some essential amendments. He says he would not have proposed such changes if the Dc party had not proposed inserting the Pacts into the Constitution.

E qui si inserisce una questione abbastanza grave e profonda, quella dei rapporti della Chiesa cattolica col regime democratico repubblicano. Il nuovo giuramento dei vescovi sta bene; ma Concordato e Trattato sono qualche cosa di più del giuramento, sono un impegno e un grande impegno. Ora, in cerca di una documentazione sopra questo tema, mi è accaduto di sfogliare un testo autorevolissimo di Diritto delle Decretali, manuale d'insegnamento nella Pontificia Università Gregoriana in Roma, e a proposito dei concordati, delle condizioni e del momento in cui la Santa Sede li conclude ho trovato un'affermazione assai sintomatica che mi permetterete di citare: '*Sedes Apostolica, ne evidenti ludibrio exponatur, conventiones in forma solemnium inire non solet, nisi gubernium civile necessitate petendi consensus comitiorum publicorum non sit adstrictum.*'⁵⁹⁷

Much to the delight of the *costituenti* someone asks if he would translate the statement. He does so: "La Sede Apostolica, per non correre il rischio di gravi delusioni, di solito non stipula convenzioni solenni, se non con quei governi i quali non sono costretti a chiedere l'approvazione di un corpo rappresentativo".⁵⁹⁸ He suggests to Orlando that possibly in such a statement can be found the reasons for the inability of the government of 1919 to conclude the negotiations.⁵⁹⁹

Dismissing Togliatti's attempts to undermine the Church's democratic credentials, Stefano Riccio (Dc) argues that one cannot make such a judgement based on a single source. Moreover, he suggests that the instruction, which was written

⁵⁹⁶ Ibid., p. 327.

⁵⁹⁷ Ibid., p. 332.

⁵⁹⁸ Ibid.

⁵⁹⁹ Ibid.

possibly by Wermez - a professor of the Gregorian University, pre-dates the collocation of the Code of Canon Law (by Eugenio Pacelli – published in 1917) and cannot therefore be used as an argument against the Church's support for democracy.⁶⁰⁰

Riccio further points out that the Church has made corrections to official documents following the installation of the Republic, which now read '*Repubblica*' not '*regno*'. This, he claims, is not only a question of form but also of substance: "Questo significa che la Chiesa ha riconosciuto l'avvento della repubblica; questo significa che la Chiesa è sensibile alla democrazia; questo significa che la Chiesa gradisce trattare con la rinata democrazia italiana."⁶⁰¹

Rossi adds his own input into the debate on the origins of the Lateran Pacts:

non Orlando Parigi 1919; non Roma Nitti 1917, ma Vienna 1914-15, Francesco Giuseppe e la Cancelleria austriaca! Si esaltano i Patti Lateranensi come una magnifica conquista dello Stato italiano. Ebbene diciamo qui quello che durante la dittatura fascista era pericoloso dire pubblicamente: fra gli scopi di Guerra degli imperi centrali vi era appunto la ricostruzione di un piccolo stato teocratico temporale in Roma. E Francesco Ruffini, esaminando i Trattati Lateranensi e paragonandoli articolo per articolo, virgola per virgola, col progetto austro-germanico, trovò che il Concordato del 1929 non è diverso da quello che sarebbe stato imposto all'Italia sconfitta, per sua umiliazione, dai due Kaiser.⁶⁰²

Cevolotto calls on the Assembly not to accept the Pacts which, he argues, were agreed in particular circumstances with a government that did not represent Italy and cared little for the long-term best interests of the Italian State.⁶⁰³ Della Seta (Pri) is more direct: he calls for a complete revision of the Lateran Pacts:

Questi Patti . . . sono stati firmati dal dittatore e non dal popolo nel pieno esercizio della sua sovranità. Questi Patti portano, esplicito, il riconoscimento dell'istituto monarchico e la loro inserzione nella Costituzione repubblicana non è una garanzia sufficiente per l'atteggiamento della Chiesa. Questi Patti sono indissolubilmente legati al periodo più tragico e ignominioso della nostra storia. Non è interesse della Chiesa che un tale ricordo rimanga.⁶⁰⁴

⁶⁰⁰ Ibid., p. 382. However, the fact that the rule was clearly applied in relation to the negotiation, formulation and signing of the Lateran Pacts did not help Riccio's case.

⁶⁰¹ Ibid.

⁶⁰² Ibid., p. 415.

⁶⁰³ Ibid., p. 546.

⁶⁰⁴ Ibid., p. 617.

The last word on the Fascist origins of the Pacts must go to Zuccharini (Pri). He warns of the possibility of another dictatorship taking hold in Italy due to the fact that the new Constitution has been created without updating the old legal system and dismantling the old apparatus of state.⁶⁰⁵

As we can see by reading clauses 2 and 3 of draft article 5, and comparing it to the eventual article 7 of the Constitution, the vast array of mainly political arguments analysed thus far presented by the Christian Democrat's opponents had little effect on the final outcome of the debates. If the same will be true of the more religious and legal aspects of the debates, it is nevertheless important to examine these discussions in order to come to a better understanding of the nature of the Dc victory on this issue and how it was achieved.

c) RELIGIOUS CONSIDERATIONS

It had become patently clear to *costituenti* from right across the political spectrum that the Catholic Church, revelling in its post-war popularity, was flexing its muscles via Catholic Action and the Catholic press over the issue of the Lateran Pacts. And Dc intervention in the Assembly was the key to insertion of the Lateran Pacts in the Constitution – a crucial factor in protecting the Church's interests.

As discussed earlier, one of the key reasons for the need to keep the Lateran Pacts alive, and, moreover, to guarantee their future by including them in the Constitution, was to ensure that relations between the Catholic Church and the Italian State would continue to be governed by them. This, in the view of the Catholic hierarchy, was the best and most secure way of guaranteeing its spiritual and juridical sovereignty and financial independence, while maintaining the privileged position it had enjoyed almost continually for 1600 years at the heart of the *Città Eterna*. As this theme of the privileged position of the Vatican has already been discussed in relation to article 5, clause 1,⁶⁰⁶ I will not repeat those discussions here, even though they were used by the *costituenti* to argue for both clause 1 and clause 2 of this article.

⁶⁰⁵ Ibid., p. 235.

⁶⁰⁶ See section B1 (iii) of this thesis.

(i) The ‘pace religiosa’ and the ‘coscienza religiosa degli italiani’ issues

Subcommission 1

These themes appear throughout the debates and are frequently interwoven with other arguments so it is quite difficult to look at them as separate arguments. The exchanges regarding the *pace religiosa* issue are very interesting from the point of view of the attitudes of the various groups to the subject. Given that the Church had acquired a position of considerable strength by this time, it was clearly an advantage for the Catholics to combat those arguments of their opponents which threatened the *pace religiosa*, a concept which was also introduced into section 3 of the ICAS proposals. Within the debates, however, the Catholic parties tend to use it in an aggressive, threatening manner constantly warning the others that they may upset the *pace religiosa* with their demands not to include the Pacts in the Constitution, whereas the Communists and Socialists in particular tend to use it as a tool for conciliation: they constantly repeat that they have no intention of disturbing the *pace religiosa*.

As far as the origins of the phrase are concerned (at least with regard to the arguments around the Constitution and the Lateran Pacts) one must go back to 1944 when Arturo Carlo Jemolo attempted to initiate a discussion on ecclesiastical law, its position in the new Italy and the effect of the Lateran Pacts, which, according to Jemolo, had put ecclesiastical law into the realms of the *rami morti* of Italian law. Jemolo’s position was outlined in his famous pamphlet ‘Per la pace religiosa d’Italia’. The pamphlet partially succeeded in resuscitating discussion on the subject, but more in the political sphere than the juridical one. But it was the title of the work – or more specifically the phrase ‘pace religiosa’ – that was almost as significant as the content. As Long puts it: “È singolare che il titolo utilizzi l’espressione che nella primavera del 1947 diventerà quasi monopolio della Chiesa e di coloro (dai liberali ai comunisti) che accettano la sua impostazione dei rapporti Stato/Chiesa.”⁶⁰⁷ In other words, the concept of *pace religiosa* moved from the realms of pluralism (that is, absolute freedom of conscience as a basis for the whole debate, as in Jemolo’s interpretation of it) into the realms of integralism, where the Church and the Christian Democrats used it to make thinly veiled threats regarding national unity and to cajole parties from across the whole political spectrum into supporting its own, integralist proposals. In fact, Jemolo is unequivocal in his view on the use of the term by the Catholic Church with regard to the insertion of the Pacts into the

⁶⁰⁷ Long, *Alle origini del pluralismo confessionale*, p. 317.

Se fosse stato al potere un governo non democristiano, il governo sarebbe stato il naturale mediatore perché questi ritocchi fossero concordati con la Santa Sede; il governo come tale è stato purtroppo assente. Comunque la situazione è questa: la Santa Sede pone come condizione di pace religiosa la canonizzazione costituzionale degli Accordi lateranensi.⁶⁰⁸

And it is not only the Catholic Jemolo who is taking these threats seriously: he also quotes Togliatti as saying in the debates: “Il contrario del termine *pace* è *guerra*. E' vero che per fare la guerra bisogna essere in due e che una delle parti può sempre dichiarare – come fai tu, compagno Nenni – no la guerra non la vogliamo; ma per dichiararla, la guerra, basta uno solo.”⁶⁰⁹ In the context in which Jemolo puts this speech, this ‘uno solo’ appears to be a clear reference by Togliatti to the Catholic Church. As mentioned above, the term, as used by Jemolo, was based on pluralist principles. In Jemolo’s own words:

Non è possibile rinunciare al postulato della libertà di coscienza, intesa come libertà non pur di praticare, ma di difendere e diffondere, la propria fede religiosa, quale essa sia. Negli ultimi quindici anni vedemmo un governo scettico e una magistratura che era gettata per opportunismo a soddisfare tutto ciò che credeva desiderio della Chiesa, foggare regolamenti e interpretarli, anche contro la loro lettera, in modo da far rivivere odiosità che si credeva sparita per sempre dal suolo europeo: arresti e condanne di distributori di bibbie protestanti, adunanze di sparuti gruppi di evangelici in case private per cantare inni e salmi, disperse dalla polizia e condannate dalla magistratura; e nel codice penale fu punito il solo vilipendio del culto cattolico e stabilita una diversa protezione per i ministri e i templi cattolici e per quelli degli altri culti. Tutto questo offende a tal punto quei principi di libertà religiosa in cui credo si trovino d'accordo quanti sperano in una nuova Italia, che non può neppure discutersi sulla opportunità di una mantenimento o di una abrogazione.⁶¹⁰

Acknowledging the agreement between himself and Togliatti on the subject of the recognition of the independence of Church and State, Dossetti adds that having admitted that their relations should be governed by concordatory negotiations, one cannot then fail to recognise in the Constitution the concordatory agreements already in existence – the Lateran Pacts. He points out that Togliatti accepted the principle of recognition of the Lateran Pacts in a speech made on 21st November, 1946 and considers it natural that he should now accept the inclusion of a reference to the

⁶⁰⁸ Jemolo, *Chiesa e Stato in Italia*, p.307.

⁶⁰⁹ Ibid.

⁶¹⁰ A.C. Jemolo, *Per la pace religiosa d'Italia*, Firenze, La Nuova Italia, 1944, p.33.

Lateran Pacts in the Constitution. He accepts that amendments to the Pacts might be necessary on a technical level but that “è invece necessario vedere realisticamente ciò che vi è al fondo della questione,”⁶¹¹ in other words, what is at stake if the Church fails to achieve its aim of constitutionalisation of the Pacts. Dossetti says that if the declarations made by Togliatti in the Constituent Assembly are sincere, then “la sola conseguenza logica che se ne può trarre è che si deve arrivare ad introdurre nella Costituzione quell’unica effettiva garanzia che oggi può tranquillizzare la coscienza dei cattolici, senza recar pregiudizio alle coscienze non cattoliche.”⁶¹²

Dossetti’s demand that the Pacts as they exist should be included is not, of course, the logical conclusion of Togliatti’s declaration. As Togliatti, and many others, had repeatedly stressed, all that was necessary, and juridically more correct in a constitution, was a statement to the effect that Church/State relations were regulated ‘in termini concordatari’. The dogged insistence of the Catholics on having the existing Pacts inserted in the Constitution was almost certainly in support of the Vatican’s desire not to have to re-negotiate them, which might have followed if the Constitution had simply referred to Church/State relations being governed ‘in termini concordatari’. Although Togliatti himself, along with Calamandrei, Cevolotto and others insisted that not specifically referring to the Pacts in the Constitution did not mean that they would not still be valid, the Dc did not want to risk a subsequent juridical debate, with the Pacts in what they would perceive as the much weaker position as a stand-alone document.

In the debates, Togliatti takes issue with Merlin over his references to the Communists and the *pace religiosa*. He states that the Communist Party in Italy, even before it had been able to openly resume its political activity, had defended the *pace religiosa* in Italy. Not one of their policies aimed to impair the religious peace of the Italian people. He says that they understand the difficulties of this period of reconstruction for their country and do not believe that this process should be complicated by religious conflict. He says that Christian Democrats cannot possibly suspect the intentions of the Communists, having acceded to the Dc’s request for recognition of the sovereignty of the Church. He goes on to complain that while the Communists have made such efforts towards a *rapprochement*, the Dc have turned away, presenting ever more peremptory formulas on other aspects of the Pacts.⁶¹³

⁶¹¹ CRAC, vol. 6, p. 777.

⁶¹² Ibid.

⁶¹³ Ibid., p. 784.

Aldo Moro declares that he will vote in favour of the Pacts and will thus be interpreting the Catholic conscience of the Italian people, and of Catholics in other parties. Moreover, he says that with this vote the members of the Dc party do not intend to impose the affirmation of a temporary majority,

ma vogliono avviare tutta la vita politica italiana verso la pace religiosa, nella certezza che, anche per mezzo del loro contributo, saranno operati nel Concordato quei ritocchi che valgano a rendere i termini della pace religiosa perfettamente aderenti allo spirito liberale e democratico della nostra Costituzione.⁶¹⁴

This was the key moment of the debate, just prior to voting and Moro succeeds in getting in two final references to the *pace religiosa* in order to hammer home the importance of voting for this article and the consequences of not voting for it. The major ‘ritocco’ would, of course, have the elimination from the Pacts of the reference to the Albertine Statute in which Catholicism is the religion of State. It is difficult to believe that Moro in all sincerity thought the Vatican would agree to this.

Regarding the inadmissibility of the Lateran Pacts due to the era in which they were signed, Moro considers the important point to be not the type of government with which the Catholic Church made the agreement, but the fact that the Pacts settled an age old problem (the Roman Question) which had matured in the consciences of the Italian people.⁶¹⁵ Moro thus argues that they cannot reject the Lateran Pacts which have “una straordinaria importanza per aver realizzato la pace religiosa nell’ambito del popolo italiano.”⁶¹⁶

In response to Cevolotto’s points regarding crystallising Church/State relations by means of the Lateran Pacts and the alleged problems this may cause, Moro plainly states that there is absolutely no question of rejecting the Lateran Pacts on any point of detail contained therein, neither is it possible to “trascurare la questione di principio alla quale tutti quanti dobbiamo essere estremamente sensibili.”⁶¹⁷ He claims that if they reject the inclusion of the Lateran Pacts in the Constitution the Italian people will react in a much stronger way than Cevolotto and others have reacted. They will see it not as a problem with Article 5 of the

⁶¹⁴ Ibid., p. 787.

⁶¹⁵ Ibid., p. 151. To what extent this was true is open to debate. He was certainly placing a lot of emphasis on what the average Italian thought of an upheaval which had occurred nearly eighty years and almost four generations before. As Jemolo points out: “Negli italiani è ormai così radicata l’idea di un papa chiuso nel Vaticano, corazzato in una protesta, che tutti sanno sterile.” Jemolo, *Chiesa e Stato in Italia*, p. 229.

⁶¹⁶ Ibid.

⁶¹⁷ Ibid.

Concordat, but as if the new Italian democratic system wants to distance itself from the Pacts which represents to the Italian people the regaining of the *pace religiosa* in which they want to remain “come garanzia di costruttività nello sviluppo democratico della vita italiana.”⁶¹⁸ He states his intention to vote against Togliatti’s ‘termini concordatari’ proposal which he thinks is too vague, and does not reflect the disciplinary nature of the Concordat which has, in its years of application, satisfied the vast majority of the Italian people. There is an important point to raise here: if, as has already been established, a large proportion of the *costituenti* knew little or nothing about the Pacts, then how many ordinary Italians would have been aware of their contents? I believe Moro is putting far too much emphasis on the Italian general public’s knowledge of its contents. If Jemolo was right about the public reaction to the Roman Question by 1929, how could the situation have changed by 1946? Would not the hardships of Fascism and the war years have sent the Pacts even further from the minds of ordinary Italians who would have been concerned primarily with self-preservation?

In an extraordinary piece of mystificatory sophistry, Ottavio Mastrojanni (Uq) argues that relations between Church and State have a particularly spiritual nature which transcend any juridical conceptions. The content of such relations cannot be manipulated by any artificial juridical construction. If we make an abstraction of this concept, we put ourselves on a level which denaturalises the very essence of the content of the Treaty and Concordat. For these reasons, he says, we must ignore sophisticated juridical considerations and include the Pacts unaltered in the new Constitution, in accordance with the collective conscience of the Italian people, which itself remains unaltered in time.⁶¹⁹

Thus, impervious to the technical requirement of juridical correctness, and claiming to speak in the name of the religious sensibilities of the nation, the Catholics were able to gain a majority in favour of taking forward to the Assembly the proposal to insert the Lateran Pacts, as they existed, into the Constitution.

⁶¹⁸ Ibid., p. 152.

⁶¹⁹ Ibid., pp. 156-7.

Emilio Lussu (Psa) warns that if they agree to include the Lateran Pacts in the Constitution “le realizzazioni sociali sarebbero ancora da venire.”⁶²⁰ He says the situation is already bad and cites a message read out to pupils in a scuola media in Rome instructing them to attend three afternoons of spiritual exercise in preparation for the Easter celebrations. The message says that a roll-call will be taken and anyone absent will be called before the head the following morning and will be expected to provide letters from their parents explaining their absence. After some personal attacks between Lussu and President Terracini, Lussu reads out the conclusion of the notice during which comments and interruptions abound:

Per le spese della cerimonia – è questione di coscienza non di borsa – gli alunni dovranno versare liberamente 20 lire. Questa è la pace religiosa, onorevole Tupini! Noi che ci sentiamo, in parte, continuatori della tradizione del Risorgimento nazionale, non accettiamo che il Patto lateranense rientri nella Costituzione.⁶²¹

Nenni turns the Dc argument on its head, claiming that it is only in a *stato laico* that they will find a true *pace religiosa*.

Che ci fosse infine un’aspirazione laica nel sentimento e nella volontà dei dodici milioni elettori repubblicani del 2 giugno, io lo deduco dalla convinzione profonda che il fondamento della pace religiosa è nella laicità dello Stato e nella laicità della scuola. Di ciò abbiamo avuto la prova negli anni più difficile per la vita politica e sociale del nostro paese, quelli che per l’appunto vanno dal 1943 al 1945, e che non hanno visto affiorare nessun dissidio di carattere religioso.⁶²²

Nenni’s *pace religiosa* differs from the Dc’s in that he bases it on equality for all, not on special arrangements for Catholics. He insists that in the Psi “non vogliamo . . . promuovere una lotta di carattere religioso e di mettere in pericolo quella che l’onorevole Tupini ha chiamato la pace religiosa.”⁶²³ However, they have been forced into opposing insertion of the Pacts purely as a result of Dc intransigence:

È la Democrazia cristiana che chiede di introdurre nella Costituzione del Paese, con una specie di sotterfugio, i Patti Lateranensi. Siete voi, quindi, che ci obbligate a discutere la natura di questi patti, ciò che hanno significato nella storia del nostra Paese, la portata che avrebbe la loro inserzione nella Costituzione. Ora, come dico che non abbiamo l’intenzione di sollevare la

⁶²⁰ CRAC, vol. 1, p. 245.

⁶²¹ Ibid., pp. 245-6.

⁶²² Ibid., p. 302.

⁶²³ Ibid., p. 305.

questione dei Patti Lateranensi, così aggiungo che non possiamo accettare che, in aperta violazione con lo spirito laico, i Patti Lateranensi siano inseriti nella Costituzione.⁶²⁴

He believes that the Dc, even more than the Liberals, would be committing a historical and political error if they underestimated the two main principles of the *Risorgimento* which have done so much to bring about the *pace religiosa*. Thus, he says, it is wrong to assume that it was the Lateran Pacts that brought about the *pace religiosa*:

la pace religiosa esisteva in Italia da molto tempo; la pace religiosa si può dire che esisteva fino dal 1905, quando la Chiesa rinunciò al 'non expedit', e quando, via via, si formarono i partiti cattolici che si posero sul piano del riconoscimento dello Stato. La pace religiosa è stata opera della vecchia borghesia liberale, da Cavour a Giolitti, e poggia su due principî ancora interamente validi: il principio di libertà applicato ai rapporti fra la Chiesa e lo Stato, ed invocato da Cavour nel suo discorso del marzo 1861, ed il principio dell'agnosticismo del Governo costituzionale in tutti i problemi dello spirito e, specialmente, nel problema della fede.⁶²⁵

In other words, a very specific set of historical developments have in reality produced a real *pace religiosa*, and it was these which produced the very grounds of possibility for the Lateran Pacts. The latter were the consequence, not the cause, of the *pace religiosa*.

There can be little doubt that the Catholic insistence on inclusion of the Pacts risked raising the temperature of the debate to unpredictable levels, and Togliatti, in response to Nenni's evident willingness to do so, attempts a moderating mediation:

Non condivido l'opinione . . . che la questione del mantenimento della pace religiosa non esiste. Tutti coloro che hanno fatto la campagna elettorale precedente al 2 giugno lo hanno sentito. È meglio dunque riconoscerlo e sapere che la pace religiosa del nostro Paese si mantiene attraverso l'azione meditata dei Governi e di quei partiti che hanno una responsabilità di Governo o, se non altro, una funzione di direzione della vita nazionale, in quanto partiti di massa.⁶²⁶

Togliatti insists that they must

riconoscere che la pace religiosa è fondata su due colonne: il Trattato lateranense e il Concordato . . . Nessuno di noi aveva chiesto che venisse aperto il problema del Trattato e del Concordato; nessuno del nostro partito in particolare. Fin dall'anno scorso, in occasione del nostro V Congresso, noi

⁶²⁴ Ibid.

⁶²⁵ Ibid., p. 306.

⁶²⁶ Ibid., p. 331.

facemmo un'affermazione precisa in questo senso. Ma quando voi ci avete chiesto l'inserimento del Trattato e del Concordato nella Costituzione, attraverso il richiamo del articolo 5, allora il problema si pone e siamo costretti a discutere.⁶²⁷

Togliatti repeats that the problem exists and that therefore they have a duty to carry out

qualche cosa di comune accordo in questa Assemblea e fuori di questa Assemblea per garantirne la soluzione, cioè per dare alla pace religiosa del popolo italiano un carattere solido e permanente. Noi vogliamo una Costituzione la quale guardi verso l'avvenire. I problemi già risolti nel passato non ci interessano più: cerchiamo però che quelle posizioni di libertà, che hanno conquistato i nostri padri e i nostri avi attraverso lotte memorabili, non vadano perdute. E voi, colleghi della Democrazia cristiana, credo che farete opera buona, favorevole al consolidamento dell'unità politica e morale della Nazione, se non porrete noi e altre parti importanti dell'assemblea di fronte ad alternativi troppo gravi e invece cercherete insieme con noi la forma o la formula migliore per risolvere questa questione col soddisfacimento di tutti e con la più larga maggioranza possibile.⁶²⁸

Stefano Riccio (Dc) attacks the non-Catholic parties for what he claims is their lack of consistency in promises made regarding the *pace religiosa* and the insertion of the Lateran Pacts into the Constitution. Prior to the election of June 2nd 1946, he says "altri grandi partiti hanno detto solennemente che essi intendevano non denunciare i Patti lateranensi" and therefore, "il popolo italiano, di fronte a questa affermazione, ha dovuto interpretare l'orientamento di questi partiti nel senso che i Patti lateranensi andavano pienamente rispettati; e vedremo se rispettarli significhi che debbono entrare nella Costituzione."⁶²⁹ Riccio criticises the other parties for not saying what they mean and warns them that they cannot have religious peace without recognition of the sovereignty of the Church and without recognition of the Lateran Pacts. He reserves his most vitriolic attack for Nenni:

Non siamo noi a turbare la pace esistente, perché non poniamo condizioni nuove: siete voi che questa pace intendete turbare. E, in verità, l'onorevole Nenni l'ha turbata questa pace, e non ha turbato soltanto la pace, ma ha turbato l'equilibrio umano della coscienza italiana, quando ha detto che al suo gruppo non interessano i problemi dello spirito.⁶³⁰

⁶²⁷ Ibid.

⁶²⁸ Ibid., p. 332

⁶²⁹ Ibid., p. 382.

⁶³⁰ Ibid.

Riccio claims that within the State the *pace religiosa* “era sentita come un bisogno assoluto e si poneva come la base potenziatrice della rinascita libera del popolo stesso.”⁶³¹ He goes on to construct a history of the Italian people’s struggle to recover the *pace religiosa*, warning against “fare giuochi politici su questo punto. La pace religiosa in Italia è garantita dai Patti lateranensi. Ogni attacco contro di essi è turbamento di questa pace ed è sopraffazione della realtà sociale.”⁶³²

In an incisive attack on the Dc’s intransigence over the issue, Paolo Rossi (Psli) warns of the consequences of it:

Sarà certo deplorabile per voi, colleghi democristiani, ma sembra anche a me deplorabile il pullulare di libelli antireligiosi per tutta la penisola. Se con debole maggioranza, né potrebbe essere altrimenti, l’Assemblea votasse quegli articoli che danno tono confessionale al documento e che sono, in buona sostanza, i medesimi che lasciarono morire lontano dalla sua cattedra Ernesto Buonaiuti e avrebbero messo in un tremendo imbarazzo il vostro stesso antesignano don Romolo Murri, allora l’Assemblea creerebbe in Italia un decennio di lotta religiosa, inutile, demoralizzante, capace da sola di stremare il Paese.⁶³³

The reference to dissident Catholics in Rossi’s speech, and the problems which insertion of the Pacts as they stand into the Constitution could cause, refers directly to the provision within the Pacts for the application of sanctions to clerics who are dismissed from their ministry. The application of Canon Law to such individuals, with its insistence that they should not be given employment, even by the state, which directly involves dealings with the public, would be in conflict with the civil rights all citizens of the Republic should enjoy in connection with the employment they are qualified to discharge.⁶³⁴

Igino Giordani (Dc) argues for the Treaty and Concordat to be inseparable and proceeds to the constitutional problem: should they be included in the new Constitution? “O meglio ancora: avendoli la Sottocommissione e la Commissione dei Settantacinque inseriti già nel progetto di Costituzione, dobbiamo oggi noi toglierli?”⁶³⁵ To Giordani the *pace religiosa* is one of the greatest elements of strength in the new Republic from which will emanate all the energy to drive Italy’s

⁶³¹ Ibid., p. 384.

⁶³² Ibid., p. 385.

⁶³³ Ibid., p. 415.

⁶³⁴ For more information on the Buonaiuti case see section B2 d) of this thesis.

⁶³⁵ Ibid., p. 437. Giordani, at this point, is employing a well-worn political tactic in attempting to manipulate the Assembly’s procedures by assuming that the draft document cannot be amended: the whole purpose of a draft document is to propose articles for discussion, to be then accepted, amended or removed.

reconstruction. For this reason he advocates not touching anything in the Pacts so as not to disturb this *pace religiosa*. He then gets to the heart of the matter.

Perché noi vogliamo inserire i Patti Lateranensi nella Costituzione? Perché vogliamo affermare la loro enorme ed unica importanza di Patti internazionali? Non si tratta del solito Trattato fra due potenze, fra due sovrani. . . . Qui il Trattato è concluso con il Capo spirituale della nostra religione, che è il fondamento della nostra Chiesa, e nel quale s'impenna tutta l'autorità e il prestigio della nostra fede. È dunque qualcosa di unico. Non si tratta qui di interessi economici pattuiti fra due Stati, ma dei più alti interessi spirituali che hanno trovato la loro sistemazione; sistemazione che non riguarda soltanto noi in Italia, ma i cattolici di tutto il mondo.⁶³⁶ Ecco perché noi vogliamo che questi Patti siano consacrati in un documento che ne affermi la solennità, l'unicità e la stabilità.⁶³⁷

He warns that taking the Pacts out of the Constitution will weaken them and the Italian public cannot be given this impression. He further suggests that all the doubts, concerns and even the technical objections to the inclusion of the Pacts in the Constitution must be ignored as they have “una importanza subordinata.”⁶³⁸ Giordani argues that even the Law of Guarantees had the weight of a basic State law and this, being a unilateral law, was far inferior to the Lateran Pacts. He is concerned about what other countries with large Catholic populations will think if Italy does not do everything in its power to deal effectively with the relationship between Church and State and to protect the Papacy in the exercise of its duties. He refers to recent developments in Protestant ecclesiology as giving more importance to the Church as a constructive element in society, of which Italy is a prime example:

Oggi c'è anche nei settori protestanti un risveglio di quello che si chiama *Sensus ecclesiae*: il senso della Chiesa, come popolo che agisce nel campo dello spirito. Orbene, questo avviene in Italia; e il popolo agisce nella concordia e nell'unità, con enormi frutti e benefici nella politica stessa.⁶³⁹

Giordani claims that the Pacts have consolidated the political unity in Italy which Togliatti holds dear, and asks what better basis is there for this national unity than a religious one?

⁶³⁶ This is not wholly accurate: spiritual freedom was obviously a major consideration in the negotiations for the Concordat; however, the Financial Convention reimbursed the Church very handsomely indeed for its loss of the Papal States, allowing it to become a major player in global financial markets, while imposing huge financial commitments on the Fascist government and all future governments. Giordani is here omitting to mention an important element of the agreements.

⁶³⁷ Ibid., pp. 437-8.

⁶³⁸ Ibid., p. 438.

⁶³⁹ Ibid., p. 438.

Specialmente in questo momento che stiamo attraversando di enorme crisi, noi abbiamo bisogno di ciò per creare gli istituti della nuova repubblica, per creare e per operare quelle riforme sociali, che saranno possibili soltanto in uno stato di euforica concordia. Questo si farà, se noi considereremo definitivamente chiusa questa partita con i Patti lateranensi del 1929, conferendo ad essi quella consacrazione che la coscienza cattolica detta.⁶⁴⁰

He advises against wasting the sense of agreement and co-operation that is pervading the country, claiming that it is not just a matter of the Dc party benefitting from it, but that it is something that lies at the heart of Catholics throughout Italy. Moreover, “si direbbe veramente che questo riavvicinarsi al tema religioso abbia irradiato su di noi un senso di fraternità dal quale molto c’è da sperare.”⁶⁴¹ He closes with a vision of Rome as the political and religious motor for the creation of a new peaceful Europe, and as the place where they will write “il primo atto della fondazione di quella che è stata vaticinata come la nuova cristianità giuridica dell’avvenire.”⁶⁴²

Like other Catholic politicians, Condorelli slants the issue: if the Pacts are not included in the Constitution “non vi accorgete che, legiferando così, voi venite a denunciare il Concordato, cioè a distruggere quella pace religiosa che tutti quanti dite di volere conservare?”⁶⁴³

Pietro Mancini (Psi) categorises the arguments against the socialist viewpoint into two sections: not disturbing the *pace religiosa* which was won by the Italian people; and regaining the unity of the Italian people. Regarding the first point he amicably criticises his friend Umberto Tupini, who as President of the First Subcommission had shown wisdom, tolerance and objectivity, but here in his speech to the Constituent Assembly

ha mutato voce, atteggiamento, volto. Mi è sembrato un uomo che voleva imporre il crisma pontificio alla Costituzione. Siamo noi dunque che abbiamo turbato questa atmosfera tranquilla? Non l’avete increspata voi? Sei stato tu,

⁶⁴⁰ Ibid.

⁶⁴¹ Ibid., p. 439.

⁶⁴² Ibid.

⁶⁴³ Ibid., p. 450. Again, by suggesting that non-inclusion equals denunciation of the Pacts he is exaggerating the consequences for effect: the Pacts had lasted 18 years without forming part of an Italian constitution and the benefits to the Church, even under Fascism, as has been shown, had been substantial. Not to include the Pacts in the new Constitution would not have in any way lessened their importance. Nor would it indicate a denunciation of them other than in the eyes of a few extreme right wing Catholic factions. However, there is a valid reason why the Vatican hierarchy was so keen for the Pacts to be inserted: inclusion would mean that the Church had a foot-hold on the political rockface of the emerging democratic republic, an opportunity that had eluded it since the loss of the Papal States at the time of Unification, and which had proved as impossible to regain under the ensuing liberal governments as it had under Mussolini.

amico Tupini, che sei andato oltre. Hai predicato bene, ma hai razzolato male, perché hai sommosso le acque immote di questa tolleranza reciproca.⁶⁴⁴

Mancini goes on to warn Tupini and the Dc party that it is not the Left who are threatening to disturb the *pace religiosa*, but the Centre and the Right, inflaming the issue and creating tensions where there are not, and have never been, tensions.

C'era qualche increspatura sulle acque trasparenti e niente più. Il popolo italiano ha saputo dare al suo sentimento religioso la saggezza luminosa della sua tradizione e della sua coscienza democratica. La pace religiosa potrebbe turbarsi con queste vostre intolleranze e queste lunghe discussioni. Fortunatamente il popolo non vi presta orecchio; perché ha una volontà orientata verso altre mete . . . Allarmava l'onorevole Giordani l'altro ieri: l'unità del popolo italiano corre pericolo. Ma l'unità del popolo italiano è rappresentata forse da questi ignorati Patti lateranensi? Rispondo subito con lo stesso argomento dell'onorevole Giordani. Egli si rivolse all'Assemblea dicendo: 'Voi vi sbagliate quando credete che la Chiesa siano i cardinali, i vescovi, i preti: niente di tutti questi. La Chiesa è la coscienza del credente, è l'io del credente.' Ne pigliamo atto e gli osserviamo: tutto ciò è vero nel campo della spiritualità, che nessuno vi tocca, perché vi abbiamo dato prove indubbie di rispettarlo. Ma se dal campo spirituale si passa al campo dell'azione cattolica la Chiesa si trasforma in strumento di politica e la religione diventa tirannia spirituale più pericolosa di quella politica. La democrazia è contro tutte le dittature: dalla spirituale e religiosa alla politica.⁶⁴⁵

Speaking directly to the Catholic deputies of all parties, he says: "Voi avete il vostro martirologio; noi abbiamo il nostro. Voi avete una fede, onorevole Tupini, che ha l'ardire di squarciare i misteri dell'al di là; noi abbiamo una fede che ci dà la forza di vincere le ingiustizie e le miserie dell'al di qua."⁶⁴⁶ He closes by trying to bring the two sides together, saying that each faith has its own important part to play in the new democratic republic.

In an attempt to focus the discussion, Arturo Labriola (Udn) raises once again the question of whether it is proper to include the Pacts in the Constitution. "La questione preliminare che il problema presenta è se sia fondata la tesi che essi abbiano dato all'Italia la pace religiosa."⁶⁴⁷ He says the test as to whether the *pace religiosa* has been disturbed is in the ability of the masses to participate in the rites and ceremonies of the Catholic faith. Neither under Fascism, nor under any of the various Liberal regimes, has this right been taken from them.

⁶⁴⁴ Ibid., pp. 474-5.

⁶⁴⁵ Ibid., p. 475.

⁶⁴⁶ Ibid.

⁶⁴⁷ Ibid., p. 481.

Qui noi non discutiamo del Concordato o del trattato fondamentale fra la Santa Sede e lo Stato italiano. Toglierne la menzione dalla Costituzione fondamentale della Repubblica non significa sopprimerli o annullarli. Almeno per il momento rimangono validi, e son da rispettare, come tutti gli altri trattati conclusi dallo Stato italiano. Che cosa accadrà appresso, non lo sappiamo. Non so se, con tanto furore di partiti proletari, marxistici e progressivi sia da prevedere una maggioranza laicistica – io non dico anticlericale – nella futura Camera dei Deputati.⁶⁴⁸

The whole point of a constitution is to provide direction and be a framework for a country's legal system, and which can be revised as necessary. As Labriola points out:

allora la stessa clausola della non rivedibilità dei Patti Lateranensi è . . . rivedibile, purché, naturalmente, ci sia una maggioranza parlamentare disposta ad ammetterlo. Il che è confermato da un'altra clausola dello stesso progetto di Costituzione. Infatti l'articolo 131 esclude dalla rivedibilità unicamente la forma repubblicana.⁶⁴⁹

Francesco Saverio Nitti (Udn) does not consider it opportune to alter the Pacts at the moment, but for reasons different from those of the Dc.

La mia tesi è questa: noi non dovremo fare alcun cosa che turbi le relazioni esistenti fra l'Italia e il Vaticano. Le condizioni quali furono stabilite da quell'accordo dobbiamo accettarle quali esse sono. In questo momento ogni discussione è vana e odiosa. L'Italia ha tali difficoltà di vita, tali turbamenti interni che, aggiungere nuove cause di turbamento sarebbe opera non benefica.⁶⁵⁰

He claims that discussions as sensitive as those regarding amendments to the Lateran Pacts are best left until such time as stability and order have returned to Italy and relations with the Vatican are on a firmer footing.⁶⁵¹

Non cerchiamo ora di risolvere queste difficoltà, ma neanche di nutrirci di vane illusioni. L'articolo 5 è una realtà; ma sarebbe vano illudersi che difficoltà reali più grandi non esistano e che non siano tali da rendere difficile in avvenire un Governo che non abbia largo spirito di serenità e di temperanza.⁶⁵²

Attacking the Dc idea that the inclusion of the Lateran Pacts is necessary to bring about the *pace religiosa* in Italy, Calamandrei admits that they solved the

⁶⁴⁸ Ibid.

⁶⁴⁹ Ibid.

⁶⁵⁰ Ibid., p. 486.

⁶⁵¹ Ibid.

⁶⁵² Ibid.

Roman Question (i.e. the territorial dispute following the annexation of the Papal States in 1870), but argues that the *pace religiosa* already exists, and has done so since priests and other ecclesiastics helped protect everyone affected by the race laws and supported and provided shelter and hiding for partisans of every political and religious creed during the war. It is obvious that it exists from events in this very chamber, he says, such as shouts of ‘Viva il Papa’ and Giorgio La Pira ending his speech with an invocation to God and the Most Holy Virgin, accompanied by the sign of the cross, which are greeted by the non-Catholic parties with neither a single protest nor any hint of laughter.⁶⁵³

He then relates the story of fra’ Michele minorita, burned at the end of the 13th century for arguing that the Gospels do not recognise private property. Fra’ Michele refused to give up his beliefs right to the end. The story goes that when asked why, he said: “This is a truth which I have always held dear to me, a fact which can only be proven by my death.” Calamandrei concludes his point by saying:

La morte per la propria idea, la morte per la propria fede, l’esser pronti a farsi uccidere per testimoniare una verità . . . anche nel periodo della lotta clandestina si sono avuti a migliaia questi esempi: e proprio quando si è visto che ci sono ancora fraticelli e religiosi disposti a dare la vita per una fede di *fratellanza umana*, proprio allora è tornata la *pace religiosa in Italia!*⁶⁵⁴

Following Togliatti’s view of the wording of clause 2, Giancarlo Pajetta (Pci) talks in very general terms about the need for the State to maintain ‘concordatory’ relations with the Church. And, what is more:

Noi non parliamo delle chiese, o delle comunità religiose soltanto, ma parliamo esplicitamente della Chiesa cattolica. Perché della Chiesa cattolica in Italia nessuno potrebbe negare quello che rappresenta oggi e che ha rappresentato per secoli per il Paese. La realtà storica è la Chiesa, non un fatto, un accordo che rimane pur sempre un fatto politico contingente. La nostra volontà è di fare che sia la pace piena tra questa Chiesa e il nostro Stato. Non si tratta già di eternare quel trattato piuttosto che un altro; non già quel trattato con quelle particolari forme. Perché, amici, quello che ci pare essenziale, è che ognuno di noi faccia uno sforzo per dare davvero la pace religiosa al nostro Paese.⁶⁵⁵

What is clear from Pajetta’s speech is that the Communist position was by this time moving away from that of the Socialists and other left-wing parties with regard to Church/State relations, and was becoming, at least in discussions around

⁶⁵³ Ibid., p. 519.

⁶⁵⁴ Ibid.

⁶⁵⁵ Ibid., p. 522.

Article 5, almost indistinguishable from that of the Dc party. He even yields to the Christian Democrat argument of emphasising the public's concern for Concordats: "Se pensassimo che i concordati non sono altro che pezzi di carta, certo non ci batteremmo né per questo né per altri articoli. Ma noi pensiamo che i concordati duraturi e le costituzioni vive sono quelli che vivono veramente nella coscienza popolare."⁶⁵⁶ Such arguments were exactly what the Dc deputies wanted to hear.

Carlo Bassano (Pdl) thinks there has been too much talk of *pace religiosa* in the subcommissions. *Pace religiosa* suggests a preceding *guerra religiosa* which he says has never occurred: the Roman Question was political in nature, not religious. Bassano sees the Lateran Pacts as "la sanzione di uno stato giuridico e di fatto, che lo Stato italiano aveva inteso mettere in essere sin dal 1871, con quel monumento di sapienza giuridica e politica che fu la legge delle guarentigie."⁶⁵⁷

Following a similar line of argument, Cevolotto claims that there are some who consider him to represent the old spirit of anticlericalism. But he claims that such a movement is long dead and, moreover, has no reason to exist any more. Nevertheless, the only thing that could possibly re-ignite such feelings is draft article 5 of the Constitution. He warns that, perhaps, the Christian Democrats and the Church do not realise that by speaking of a *pace religiosa* they have laid the foundations for a renewal of this old conflict.⁶⁵⁸ He agrees with Bassano that if the Pacts are inserted into the Constitution, it will not re-ignite a religious war because a religious war never existed; however, it will, he believes, give rise to clericalism, followed closely by the incumbent anti-clerical backlash which, he warns, will be the sole responsibility of the members of the Constituent Assembly. Mussolini accepted the Concordat simply because he wanted a conciliation at any cost; when Vittorio Emanuele Orlando met with Cardinal Cerretti in 1919, the former accepted the creation of Vatican City State, but the Church knew that any mention of a Concordat would be rejected and did not dare ask for it.⁶⁵⁹

Edgardo Lami Starnuti (Psli) proposes the following amendment to draft article 5, clause 2:

La condizione giuridica della religione cattolica è disciplinata mediante concordati con la Chiesa.⁶⁶⁰

⁶⁵⁶ Ibid.

⁶⁵⁷ Ibid., p. 534.

⁶⁵⁸ Ibid., p. 541.

⁶⁵⁹ Ibid., p. 546.

⁶⁶⁰ Ibid., p. 619.

The reason for the amendment is that the Psli agree with Togliatti's assessment of the Pacts – that they offend the civic conscience of Italians. Lami Starnuti warns the Dc directly that if they use their majority to force through the article as it stands, then in a few months they will force the Psli to begin proceedings to revise the Constitution to remove the Pacts.

Lelio Basso (Psi) also puts forward an amendment to clause 2:

I rapporti tra lo Stato e la Chiesa cattolica sono regolati in termini concordatari.⁶⁶¹

This wording, he argues, is more than adequate to guarantee the Catholic Church that the State will not intervene unilaterally in their relations. He goes on to make a radical, if not contentious, statement: religious peace in Italy cannot be disturbed by his amendment, simply because the Lateran Pacts did not bring about that peace. It came about as a result of the modernisation of Italian democracy, over a period of decades since its darkest period at the time of the suppression of the Church's temporal power in 1870.⁶⁶² Basso's main concern is to avoid the Constitution being exploited by any particular party for its own agenda. He considers that the popular conscience of the majority of Italians is best expressed by the wish that the religious peace that exists in Italy is not disturbed. In response to Dossetti claiming that he did not want the Pacts in the Constitution, merely a guarantee of the future independence of the Church, Basso argues that his amendment accommodates such an aim.⁶⁶³ He tries to flatter the Catholic Church in his closing remarks by saying that he hopes for a unanimous vote for his amendment to show that, on the one hand, Italian democracy has overcome the old curse of anticlericalism and that, on the other, the Church has learned from its own experiences that religion cannot be defended or bolstered by creating favourable laws or by making concessions with dictatorial regimes, but by supporting regimes eager to promote freedom and respect for the individual.⁶⁶⁴

⁶⁶¹ Ibid., p. 621.

⁶⁶² Ibid.

⁶⁶³ Ibid., p. 622.

⁶⁶⁴ Ibid., pp. 622-3.

(ii) Church interference in State affairs

Constituent Assembly

Francesco De Vita (Pri) is concerned that article 5 uses religion as a means to manipulate the character and morals of the nation.

Per me un'ingerenza di tale natura, in qualunque modo esercitata dallo Stato, è dannosa, perché incatena la libertà dell'individuo. A mio avviso, non può sussistere alcuna ingerenza dello Stato in materia religiosa, senza che questa ingerenza significhi maggiore o minore favore per determinate professioni religiose. Si potrebbe obiettare che l'incoraggiamento della religione per mezzo delle leggi e delle istituzioni dello Stato è reclamato per la difesa dell'ordine interno, per la moralità. Io sono fermamente convinto che la religione può produrre buone azioni, ma debbo anche dire che la religione è un mezzo d'azione il cui punto d'appoggio è estrinseco allo Stato.⁶⁶⁵

He acknowledges the role of religion in giving man hope of reaching spiritual perfection, but

si debba attribuire allo Stato soltanto il compito di rimuovere gli ostacoli che menomano la fiducia nel sentimento religioso, e di agevolare lo spirito del libero esame. Se lo Stato va oltre, se lo Stato tenta direttamente di dominare il sentimento religioso o di orientarlo, anziché determinare la vera convinzione religiosa, determinerà una coscienza religiosa che poggia sopra l'autorità.⁶⁶⁶

Reading through draft article 5, Russo Perez (Uq) says he found himself in a conflict between his roles as jurist and lawmaker and that of Catholic: how can the statute of the Italian Republic contain a reference to an international treaty? He then clearly ranks the spiritual consideration higher than the constitutional one, saying that when the time comes he will vote with the current wording.⁶⁶⁷ He says that the substance of the article has been accepted by all including Togliatti and his party. But he is not sure whether Meuccio Ruini (Udn and President of the Commission of 75) was correct when he said that the acceptance of article 5 does not mean the insertion of the Lateran Pacts into the Constitution, but only gives them a special constitutional position. He argues that the Pacts represent much more than just an agreement between two sovereign states, they are “i rapporti fra uno Stato sovrano e

⁶⁶⁵ Ibid., p. 361.

⁶⁶⁶ Ibid.

⁶⁶⁷ This incites a sarcastic comment from Giancarlo Pajetta (Pci) who says: “Allora ha chiesto consiglio al confessore, non ai giuristi!” to which Russo Perez replies, much to the delight of the Right: “Se il confessore fosse più intelligente e, soprattutto, spiritualmente più elevato di voi, il che è facile, avrei fatto bene a chiedere consiglio a lui!” Ibid., p. 399. It is clear from this exchange that there was no love lost between the right and left at this time – only two months before the Socialists and Communists were expelled from government.

la Chiesa Cattolica Apostolica Romana, che è cosa ben diversa.”⁶⁶⁸ Perez goes on to describe how the Catholic Church in Italy has its representatives at every level of society and in all parts of the Italian peninsula:

Orbene, di questo fatto assolutamente peculiare, ineguagliabile, che rappresenta tanta parte della vita della nazione, è possibile che lo Stato, nella sua Carta fondamentale, non debba tener conto, chiarendo in che modo devono essere regolati i suoi rapporti con questo ente spirituale e sovrano che siede e vive nel suo stesso territorio? . . . Noi . . . consentiamo agli amici dell’altra sponda di professare liberamente la religione che vogliono, e anche di non professarne alcuna; ma consentano essi senza rammarico a noi cattolici che, nell’orbita dello Stato sovrano, attraverso il riferimento costituzionale all’inviolabilità dei Patti Lateranensi, possiamo vedere riaffermato il nostro filiale ossequio alla Chiesa Cattolica Apostolica Romana.⁶⁶⁹

Once again, the idea of the Catholic Church as a unique institution, and the fact that the majority of Italians are Catholic by birth, is made to override all considerations of juridical correctness, even in the case of an individual who displays evident pride in his profession as a jurist.

(iii) Catholic liberty

Subcommission 1

Although Catholic liberty was generally taken for granted in the debates at the drafting subcommission, the issue was much more widely debated in the Assembly. A very important point was raised, however, by Concetto Marchesi (Pci) in Subcommission 1, who argued that although the Lateran Pacts had brought Church and State closer together, he had reservations over the future stability of the settlement due to the increased influence the Church was clearly destined to have in postwar Italy. The Church requires freedom, not a fragile conciliation:

Non sappiamo con il flusso degli avvenimenti, che porteranno nuove regole alla vita umana, quali e quanti impulsi essa avrà ad occupare più alto e più largo spazio nelle coscienze degli uomini; ma pensiamo che questo avverrà tanto più facilmente e ampiamente quanto più la Chiesa si asterrà dal chiedere agli Stati altra garanzia che non sia quella della libertà.⁶⁷⁰

⁶⁶⁸ Ibid., pp. 399-400.

⁶⁶⁹ Ibid., p. 400.

⁶⁷⁰ ACD, Busta 74, Fascicolo 1, *Commissione per la Costituzione: 1° Sottocommissione. Relazione del Deputato Marchesi sui 'Principii costituzionali riguardanti la cultura e la scuola'*, pp.61-2.

A partial response to this, in terms of the Church's anxiety to have the Pacts included in the Constitution, was given by the *qualunquista* Ottavio Mastrojanni, who argued that the oppression of the Catholics under liberalism was a major factor determining the Church's desire for the guarantees it would receive through insertion of the Pacts.

Il cittadino cattolico, il credente, specie se di elevata cultura, specie se investito di pubblici poteri, si trovava costantemente di fronte al dilemma fra l'esaudimento di quello che era l'imperativo categorico della sua coscienza, per manifestare anche pubblicamente la sua fede religiosa, e gli ordinamenti agnostici e legalitari dello Stato che impedivano queste manifestazioni; impedivano, preciso, non legalmente, ma impedivano in una ipocrite consuetudine protocollare e formale.⁶⁷¹

Togliatti denies, however, that non-inclusion of the Pacts in the Constitution would, at this point in history, result in any threat to Catholic liberty:

Voi dite: si tratta della nostra libertà, cioè della libertà della Chiesa. No, nessuno offende la vostra libertà; nessuno ha proposta e nessuno propone di ritornare a un regime giurisdizionalista, nessuno sogna in questa Assemblea di proporre una costituzione civile del clero: quindi la vostra libertà è salva. Ma voi dovete riconoscere che nel Trattato e nel Concordato vi è qualche cosa che urta la nostra coscienza civile e che sarebbe bene – lo stesso onorevole La Pira accennava a questa possibilità – che venisse al momento opportuno eliminata. Perché dunque inserirli in modo così solenne nella Carta costituzionale?⁶⁷²

Turning the argument for Catholic freedom on its head, Stefano Riccio states that Catholics already have freedom, but this fact must be recognised by the State:

Si è parlato in quest'aula di libertà sociale, cioè della libertà individuale protetta e potenziata socialmente; ebbene, questo è un aspetto della democrazia nuova, per cui, anche nel campo in cui oggi ci occupiamo, occorre costituzionalmente stabilire e *regolare non soltanto la libertà religiosa dei singoli*, nei singoli e in rapporto allo Stato, *ma anche delle e nelle organizzazioni religiosi, che uniscono e trascendono i singoli*, dal momento in cui divengono *organismi viventi* nello Stato e nella più grande società.⁶⁷³

⁶⁷¹ CRAC, vol. 1, p. 187

⁶⁷² Ibid., p. 332.

⁶⁷³ Ibid., p.385. (My italics). The reference to religious organisations that 'unite and transcend the individual' is clearly a reference only to Catholic groups; this is confirmed when he talks of the new democracy establishing and regulating such organisations from the moment when they become 'organismi viventi', in other words 'sanctioned' by the state in the form of an explicit reference to them in the Constitution. No similar argument is made by Catholics (aside from one notable exception when Jacini spoke independently of his Dc colleagues), for a similar provision for other faiths.

He says that religion, whether internal or external, has become an essential structural component of democratic life:

Nei popoli ora si ha la organizzazione non soltanto giuridica, ma anche etica e religiosa; onde il problema religioso non è più ai margini o negli interstizi del diritto, ma si pone e s'impone come un problema centrale del diritto regolatore della vita associata. Una Costituzione non può ignorarlo: deve risolverlo.⁶⁷⁴

Later in the debates, in response to criticisms of his party's attitude to Catholic freedom of conscience, Togliatti says:

Rivendichiamo e vogliamo che nella Costituzione italiana vengano sancite le libertà di coscienza, di fede, di culto, di propaganda religiosa e di organizzazione religiosa. Consideriamo queste libertà come le libertà democratiche fondamentali, che devono essere restaurate e difese contro qualunque attentato da qualunque parte venga.⁶⁷⁵

The Constitution, he says, satisfies their demands in this respect. What Catholics failed to realise was that the Constitution would be rendered completely ineffectual in the practical application of these norms by dint of the raft of oppressive Fascist laws dealing with the minority religions that would remain on the statute book for the next forty years. Togliatti reserves strong criticism for the Dc party and the way it presents itself as the sole defender of the freedom of conscience of the Catholic masses: "È vero, noi difendiamo questa libertà come partito democratico, moderno, progressivo, comunista, se volete; ma, ad ogni modo, la difendiamo. Non lasciamo a voi la esclusività di questa funzione."⁶⁷⁶

Giancarlo Pajetta (Pci) is annoyed by Catholic claims about the guarantees that insertion of the Pacts would give to the Church:

Si è parlato di garanzie, ma, a questo punto, potremmo dire: E le garanzie nei confronti degli altri, le garanzie nei confronti dello Stato, nei confronti dei laici, nei confronti degli acattolici? Abbiamo inserito, mi pare, nella legge elettorale una clausola che vieta agli ecclesiastici di fare determinati atti che porterebbero la Chiesa ad interferire nella vita politica; ma nessuno di noi ha chiesto che queste norme siano precisate nella Costituzione. Voi, onorevoli colleghi, parlate di delicatezza: forse vi sentite offesi da qualche manifestazione anticlericale; ma, che direste se noi vi chiedessimo delle garanzie contro certa intolleranza formalistica che si è manifestata anche qui? Mi pare che un collega della Democrazia cristiana abbia chiesto che i musulmani non abbiano diritto di essere sepolti in Roma. Badate che il

⁶⁷⁴ Ibid.

⁶⁷⁵ Ibid., p. 636.

⁶⁷⁶ Ibid., p. 637.

collega Di Fausto non si riferiva a quei Saraceni che venivano nei secoli lontani a fare le loro scorrerie fin sotto le mura dell'Urbe, intendeva parlare dei soldati di colore di una Nazione alleata, morti perché anche Roma fosse liberata dal giogo nazista. Noi non pensiamo certo a chiedere garanzie costituzionali contro le aberrazioni del collega Di Fausto, il quale vorrebbe farci tornare più in dietro del 1861, quando i Ministri italiani dovettero battersi per far sì che un valdese trovasse degna sepoltura in un cimitero.⁶⁷⁷

a) *A view from the Catholic 'left'*

The deputy Gerardo Bruni led a minority party of Catholics, the *Partito cristiano sociale*. As spokesman for this party he presented a view of Church/State relations which, although not representative of the majority of Catholics on the issue in question, is nevertheless important to register; not least because of the fact that it would live on in the collective memory of Catholics and be revived, for example, in the later history of the Republic in the perspectives of the 'cattolici del no' at the divorce referendum of 1974, and in those of numerous Catholics of the Independent Left electoral alliances with the Pci.

In a momentous speech to the Assembly, Bruni laments the lack of a *preambolo* to the Constitution citing the main reason for this as

la incapacità nei Settantacinque [i.e. the total number of members of the three subcommissions] di interpretare l'anima unitaria, e cioè, quel minimo denominatore comune spirituale che, al di sopra di tutte le particolari ideologie, pur esiste nel popolo italiano. Il non averlo saputo mettere convenientemente in luce, questo *commune denominatore*, il non essersi impegnati più esplicitamente su di esso, non solo rappresenta un grave difetto formale del progetto – (il che sarebbe il meno) – ma un grave difetto di sostanza che non depone favorevolmente per l'avvenire della nostra democrazia. Infatti, sulla democrazia esistono ancora in Italia delle gravi riserve.⁶⁷⁸

Bruni then argues for a religious sensitivity in both the Constitution and in the day-to-day running of the State:

La democrazia crea una situazione spirituale per tutti. È un regime di comunione tra gli uomini, che posseggono convinzioni diverse verso l'ultimo destino dell'uomo, ma che nella Città temporale vogliono compiere un'opera comune, che non pregiudichi questo destino, che, anzi, lo favorisca . . . Pretendere di far adottare dallo Stato nella sua totalità l'ideologia cattolica o marxista, significherebbe introdurre nella vita politica degli elementi di turbamento, che la politica, di sua natura, non può sopportare. Esistono delle

⁶⁷⁷ Ibid., p. 523.

⁶⁷⁸ Ibid., p. 401.

verità e dei valori che tutti gli uomini non possono non riconoscere e che lo Stato, organo del bene comune, deve, perciò riconoscere. Di fronte a questi valori lo Stato non può essere agnostico; una Costituzione non può chiudersi nell'agnosticismo.⁶⁷⁹

These arguments bring him onto an analysis of the basic ethical problem that underlies the democratic weakness in Article 5 (draft):

Onorevoli colleghi, le garanzie, atte ad assicurare la libertà di coscienza, di culto e di religione, non potranno essere stimate giammai eccessive da coloro che, come voi, sanno apprezzare il valore della spontaneità dello spirito nella ricerca della verità e l'importanza che assume il rispetto dei diritti naturali dell'uomo in ogni conquista spirituale politica ed economico-sociale . . .⁶⁸⁰

He advises the Assembly that they must, above all, be unanimous in their duty to nurture the political and spiritual well-being of all Italians. However, he acknowledges that defining this political and spiritual well-being is far from straightforward. Neither in Italy nor elsewhere does there any longer exist spiritual unity.

Esiste una pluralità di famiglie religiose e filosofiche. Non è più possibile, dato che fosse consigliabile, unificare politicamente gli italiani all'ombra di un determinato credo religioso. È invece possibile unificarli sulla base del rispetto delle regole della morale naturale e dei diritti naturali dell'uomo, sulla base . . . di un credo civico pratico, morale e politico, su precise disposizioni costituzionale e legislative che prescindono da qualsiasi giustificazione teologica e filosofica. Si tratta . . . di identificare un principio e di tracciare una linea di condotta politica da valere in tutti i tempi ed in tutte le situazioni, che sono tenute a rispettare tanto le maggioranze quanto le minoranze religiose.⁶⁸¹

The stability in the new Constitution must, says Bruni, come from man, not from God:

È bene che l'unità politica non si tenti di cementare dall'alto di un sistema di verità rivelate, e cioè con un movimento discendente, ma sibbene con un movimento ascendente, che parta dalla chiarezza delle verità naturali come il processo più educativo e più formative dello spirito umano. L'unità politica non può avere per base che la chiarezza di queste verità naturali, che costituiscono come l'ideologia di tutti, l'ideologia comune a tutta la Nazione. Ma questo patrimonio comune non deve essere misconosciuto dagli italiani, e deve essere positivamente e rigorosamente difeso dalla legge.⁶⁸²

⁶⁷⁹ Ibid.

⁶⁸⁰ Ibid., p. 402.

⁶⁸¹ Ibid.

⁶⁸² Ibid.

This is an unusual viewpoint, possibly not shared by many Catholics, but one which successfully gets to the heart of the issues in question. Bruni talks of the need to give society a “positivo e vitale orientamento religioso” which he says is already evident in the draft Constitution in its defence of the freedom of the individual and of social justice.⁶⁸³ But, he warns

c'è una religiosità, e, vorrei dire, un cristianesimo apocrifo, che è quello dei governi clericali, paternalistici, assoluti, che lasciano sussistere tranquillamente le più grosse ingiustizie sociali; e c'è una religiosità ed un cristianesimo autentico, che è quello dello sforzo costante ed eroico verso la libera ricerca della verità e della giustizia. È pertanto su questa base spirituale, che può chiamarsi bensì laica, ma non laicista,⁶⁸⁴ che potrà trovare la sua piena applicazione il principio dell'unità e del pluralismo spirituale in campo politico, che solo è in condizione di garantire il pieno rispetto della libertà di coscienza, di culto e di religione ad ogni cittadino. Evidentemente non si può parlare di queste libertà dove esiste una 'religione di Stato' e dove esiste 'l'ateismo di Stato'. Qui, evidentemente, non si tratta di affermarsi sul principio della 'tolleranza religiosa' e della 'tolleranza filosofica', che per me equivarrebbe a professare l'indifferentismo religioso e filosofico; qui si tratta dell'adozione – in via di principio – del metodo della 'tolleranza civica'.⁶⁸⁵

As regards the relationship between Catholicism and politics, Bruni says:

Senza compiere un tentativo di sovvertire l'ordine politico, che anch'esso è una parte dell'ordine divino, non ci è lecito, dirò usando una terminologia teologica, comportarci come cattolici quando ci troviamo sul terreno politico; siamo, invece, tenuti a comportarci sempre da cattolici, distinguendo in tal modo, senza separarlo, l'ordine politico dall'ordine religioso. Quando ci troviamo sul terreno politico, l'unico modo di salvare l'essenza del cristianesimo, e cioè la carità e lo spirito di fratellanza, non è quello di instaurare una legislazione d'eccezione e di privilegio nei riguardi della propria Chiesa; è invece di instaurare un regime fondato su base di eguaglianza.⁶⁸⁶

Bruni emphasises the part the Christian spirit of Italians will play in the new democracy:

La maggioranza cattolica del nostro Paese accetterà questa disciplina civica, se fosse illuminata, sapendo di ubbidire allo spirito stesso del Vangelo, e, conscia di contribuire efficacemente all'unità nazionale, all'amicizia politica di tutti gli italiani, sempre necessaria, ma nelle attuali circostanze necessarissima, essendo in corso l'ardua opera della ricostruzione. Naturalmente la società italiana, in quanto composta in maggioranza di cattolici, conserverà la sua fisionomia spirituale, ma non in virtù di una

⁶⁸³ Ibid.

⁶⁸⁴ For an explanation of these terms, see Section B1 (vi) of this thesis.

⁶⁸⁵ CRAC, Vol. 1, pp. 402-3.

⁶⁸⁶ Ibid., p. 403.

giurisdizione confessionale dello Stato, ma in virtù del numero e dello spirito della maggioranza dei suoi membri e delle forme democratiche che permettono e garantiscono pienamente l'espressione pubblica dei sentimenti religiosi.⁶⁸⁷

Bruni is thus agreeing with the analysis of the parties of the left, that, from a Catholic point of view, whether there is a confessional state or not, it will have little effect on Catholics' ability to worship freely as they are already guaranteed such freedom by law, by the Concordat and by their sheer numbers. He then cites the articles that have been specifically created with this Catholic spirit in mind: draft articles 5, 14 and 15.

Sono dell'opinione che sono questi articoli a fissare la linea fondamentale della politica religiosa dello Stato italiano, e perciò non posso giustificare le ragioni che hanno indotto i Settantacinque a posporli all'articolo 5, che invece si riferisce ad un determinato problema di questa politica.⁶⁸⁸

Bruni strongly believes in the need to defend the Church's liberty on a firmly democratic footing.

Bisogna abbandonare i vecchi metodi di difesa, buoni, forse, e giusti per altri tempi, ma che nel nostro tempo si sono mostrati dappertutto inefficaci, e rischiano di offendere la giustizia. Soltanto sopra una base, chiaramente espressa, che non ammetta politiche discriminanti, neanche formali, tra maggioranza cattolica e minoranze acattoliche, la religione della maggioranza potrà ricevere le migliori e più concrete garanzie di libertà.⁶⁸⁹

He claims that what the country needs is a new, open, amicable approach to resolving old issues. He asks the Dc members what they are afraid of in applying this new approach to Church/State relations. Why are they reticent? Is it for ideological, political or religious reasons?

Già l'onorevole De Gasperi nel ricevere, durante il suo viaggio negli Stati Uniti d'America, una Commissione del 'Consiglio federale della Chiesa di Cristo', poté saggiare gli umori di quelle potenti comunità che esplicitamente lo interrogarono attorno all'introduzione del Concordato nella Costituzione. Stando a ciò che riferì in data 21 gennaio l'Associated Press, l'onorevole De Gasperi rispose all'interpellante reverendo Anthony che 'non credeva che i termini del Concordato sarebbero stati inclusi nella Costituzione'.⁶⁹⁰

As Bruni points out, the *terms* of the Concordat were not to be included – the whole document was in the clause De Gasperi was urging the Assembly to accept. He goes

⁶⁸⁷ Ibid.

⁶⁸⁸ Ibid.

⁶⁸⁹ Ibid., p. 407.

⁶⁹⁰ Ibid.

on: “Queste parole di ‘colore oscuro’ dell’onorevole De Gasperi dimostrano . . . il suo imbarazzo di fronte a così precisa richiesta del reverendo Anthony, ed anch’esse vengono a giustificare pienamente le mie richieste.”⁶⁹¹ No explanation was forthcoming.

b) *The mainstream Catholic view*

In conjunction with the precise juridical, moral and spiritual arguments for the inclusion of the Pacts proposed by the *Dossettiani* and others, Stefano Riccio (Dc) provides perhaps the best summary of the Catholic arguments from the point of view of the defence of Catholic freedom. He makes clear the proviso that even though any modification of the Pacts is in theory possible with bilateral agreement, the territorial issue is non-negotiable.⁶⁹² This stated, he moves on to give his argument for the legality and constitutionality of the inclusion of the Lateran Pacts in Article 5 (draft).

Io appartengo allo Stato ed alla Chiesa. E desidero che lo Stato e la Chiesa siano d’accordo nel regolare la mia condotta, nel rispetto della mia libertà. Ho il diritto di conoscere, a mezzo della legge costituzionale, se la mia libertà religiosa di culto è garantita e se la mia attività religiosa, con l’accordo dello Stato, avrà a conseguire anche rilevanza giuridica nello Stato. Io come cattolico ho il diritto ed il dovere a contrarre matrimonio religioso, che per me è l’unica forma ammissibile. Che farà lo Stato di fronte a questo che io ritengo un diritto ed un dovere? Lo riconosce o lo nega? Ho il diritto di saperlo. Questa è tutela effettiva della mia libertà; e se è così, siamo nel campo strettamente costituzionale, quando viene riaffermata la sovranità della Chiesa e vengono richiamati i Patti lateranensi. Il riconoscimento della duplice sovranità è la base per il coordinamento delle azioni dei soggetti destinatari delle norme e per la precisazione dei limiti dei diritti dei cittadini credenti. Il riconoscimento è necessario, in quanto, a differenza dei trattati internazionali propriamente detti, che sono stipulati tra due organizzazioni statali, le quali agiscono su territoriali diversi e per lo più in rapporto ai cittadini diversi; qui invece il territorio è lo stesso e i soggetti sono gli stessi. Non è fra la Città del Vaticano, come Stato, e lo Stato italiano che vennero stretti i Patti lateranensi; ma è tra la Chiesa e lo Stato. Però il Concordato, pur non essendo un rapporto internazionale in senso stretto, è un rapporto tra due diversi ordinamenti giuridici. Cioè, non siamo nel campo del diritto pubblico interno, ma invece sul terreno dei rapporti e del diritto esterno. È il rapporto, insomma, tra due società di ordine diverso, ma che in un certo senso

⁶⁹¹ Ibid. For further elaboration on these words ‘di colore oscuro’ uttered by De Gasperi on the matter, see his speech to the Assembly on p. 632 of volume 1 of the Debates.

⁶⁹² Stefano Riccio appears to be speaking with some authority here, although I have been unable to establish exactly what authority he had. He belonged to the ‘Gruppo cattolico napoletano’ who adhered closely to De Gasperi’s vision of the new democracy – including his diarchy theory. See www.carovanoperlacostituzione.it. (This website also contains the full Constitution as published on 1st January, 1948.)

rappresentano due cerchi concentrici, che hanno lo stesso volume: l'uomo; e la stessa superficie: il territorio.⁶⁹³

Riccio argues that creating a working relationship between Church and State is necessary not only for those who live within the confines of both entities, but necessary also to avoid a repetition of the conflict of recent years where one became stronger than the other.

Questo sarebbe un altro aspetto di un'assolutismo statale che noi, per la tutela della nostra libertà, non possiamo volere. Forse poteva anche sostenersi l'agnosticismo dello Stato ai tempi del liberalismo, quando effettivamente lo Stato non intendeva entrare nei rapporti delle singole libertà; ma oggi, invece, quando lo Stato si pone anche come regolatore delle libertà economiche e sociali, questo agnosticismo sul terreno etico e religioso è incomprensibile. È strano davvero che in una teoria, la quale pone lo Stato come il creatore unico anche delle libertà individuali, le quali non sarebbero naturali ma troverebbero la loro origine nella concessione dello Stato, si possa sostenere uno Stato agnostico. È che sotto il concetto dell'agnosticismo e della laicità vi è un'altra tendenza e un'altra realtà: ridurre la Chiesa e la religione a strumenti di governo; affermare la superiorità assoluta dello Stato. Noi questo non possiamo volerlo ed ecco perché ancora una volta diciamo che questi rapporti devono essere costituzionalmente garantiti. In sostanza vogliamo evitare ancora una volta che lo Stato abbia a ritenersi come valore assoluto ed abbia a porsi come negatore delle libertà dell'individuo, guardato non soltanto in sé come singolo, ma proiettato anche sul terreno sociale, e cioè sul terreno delle organizzazioni sociali, in cui egli entra, dalla famiglia alla Chiesa. E giacché la norma concordataria, preesiste per la volontà dello Stato e della Chiesa, lo Stato, nel momento solenne in cui si dà una struttura costituzionale, non può che riconfermare questi Patti, ponendoli, come ha bene osservato l'onorevole Ruini, in un particolare e speciale rilievo.⁶⁹⁴

There is little doubt that the religious dimension of the debates on draft article 5 were the determining factor in explaining the Catholic intransigence over the issue of inserting the Lateran Pacts into the Constitution. This despite the fact that the Togliattian formula, or any one of a number of alternative formulations, would have guaranteed that the State would be required to either accept the existing Pacts, or agree new ones. This would also have avoided the juridical anomaly of having the details of an agreement with a foreign body enshrined in the Constitution.

It is also difficult to avoid the conclusion that there was more than a little 'instrumentality' in Catholic arguments, excepting the case of the small minority. *De costituenti* constantly made claims about speaking for the vast majority of the Catholic population, without explaining why many millions had voted for 'lay'

⁶⁹³ Ibid., pp. 388-9.

⁶⁹⁴ Ibid., p. 390.

parties, and despite the fact that the Dc was a long way from achieving even a simple majority in the Assembly. The juridically unexceptionable arguments of experts such as Calamandrei were either ignored, responded to with *ad hoc* juridical speculations or, as in the disarmingly frank case of the Catholic jurist Perez, overridden by religious considerations. To most of the *laici* Catholic arguments seemed deliberately obtuse, manipulative and sometimes provocative. What lay behind Catholic intransigence?

One cannot explain it with reference to the troubled history of political Catholicism, with its inability to form a party until 1919, or the exile of Ppi leaders under Fascism, because the historical circumstances underlying these problems had been swept away, and the Togliattian formula, moreover, was sufficient guarantee against their return. There was, however, one factor of overriding importance which should not be overlooked. If a Togliattian formulation had been accepted, this would indeed have bound a future government to regulating Church/State affairs ‘in termini concordatari’, and a future government could even have agreed to retain the existing Pacts. But at the time, a Dc victory at the first Republican elections was by no means a foregone conclusion. A government of *laici* would at the very best have eliminated any reference to Catholicism as the religion of state, been expected at least to question the Church’s monopoly of religious education, and possibly revisit its fiscal and financial privileges.

Whilst there were probably, in reality, Catholics in the Assembly who would have accepted such an eventuality with equanimity, the Vatican was not prepared to do so. Nor should we underrate a substantial element of Catholic mistrust of the Communists, which Togliatti’s proclamations of good will could do little to dispel. Given the Pci’s ties to the Soviet Union with its atheism of State, such reservations would have seemed, to most Catholics, not entirely unreasonable. His awareness of Catholic fears and suspicions goes a long way to explaining the softening of Togliatti’s opposition to Catholic demands, and his eventual willingness to yield. Added to the factors already mentioned, there is the not insignificant (though constitutionally unofficial) impact of the *conclusioni cattoliche* which must have weighed heavily on Catholic moderates. Along with the genuine integralists who require no pressure from such external sources to press for a privileged position for the Church, the combined effect of all these elements produced a determination which was not going to be swayed by reasoned argument.

d) LEGAL CONSIDERATIONS

When dealing with the issue of the inclusion of the Lateran Pacts in the Constitution on a juridical plane, it became clear that the Dc's arguments became rather thin when compared with those of the constitutional lawyers of the lay parties. However, protection of the Church's interests remained paramount, and there was no diminution of their determination carry through their arguments.

(i) Problems with the Treaty and the Concordat

The eminent lawyer, Piero Agostino D'Avack, suggested that the duration of the Constituent Assembly would have been the opportune time for a re-evaluation and revision of the Lateran Pacts in the light of Italy's new republican identity. He considered that special attention should have been given to Articles 8, 21 and 26 of the Treaty and Articles 12, 15, 20, 37, 41 and 42 of the Concordat, inclusion of such articles unrevised in the Constitution being, for him, a technico-juridical error.⁶⁹⁵ It is surprising that D'Avack did not include in his list article 1 of the Treaty, referring to the confessional state, nor article 5 of the Concordat, which dealt with the civil rights of apostate priests, the legal complications of which were illustrated by the case of Ernesto Buonaiuti.⁶⁹⁶ As the confessional state has already been dealt with in the sub-section entitled 'Political Considerations' of this section, I will not repeat it here. However, article 5 of the Concordat will be discussed in what follows.

Subcommission 1

The *democristiani* Giuseppe Dossetti and Giorgio La Pira agree that if 'the family' is important enough an issue to warrant a mention in the Constitution, then surely the 'fenomeno ecclesiastico' should also be included as it has been in almost all previous constitutions. This Constitution should therefore take a position on it and the best solution, Dossetti thinks, is to include the Lateran Pacts. With regard to Basso's

⁶⁹⁵ D'Avack, *I rapporti fra Stato e Chiesa*, p.112. Articles 8 of the Treaty and 12, 15 and 20 of the Concordat referred to the King; articles 21 of the Treaty and 41 and 42 of the Concordat deal with 'titoli nobiliari'; article 26 of the Treaty refers to the Kingdom of Italy and the abrogation of the Law of Guarantees of 1871; article 37 of the Concordat refers to religious education of Fascist youth groups. For a detailed account of the discrepancies between Constitution and Concordat, see Crispo's speech in CRAC, vol. 1, pp. 367-8.

⁶⁹⁶ Ernesto Buonaiuti was a Roman priest who, even after he had been removed from his position as a university professor by the Fascist government in collusion with the Vatican, remained passionate about the role of the Roman Church. When Italy was liberated he tried to return to his former post but the *Ministro della Pubblica Istruzione* refused him his old position on the basis of the constraints created by article 5 of the Concordat. During the debates his case became, for the Left and lay *costituenti*, symbolic of the problems that insertion of the Pacts would create in the Constitution.

preoccupations over Article 5 of the Concordat, he uses the argument that anyone taking holy orders “si pongono volontariamente su una posizione di differenziamento dagli altri cittadini” by accepting that they are under the jurisdiction of the Church and must abide by its rules. For this reason, he claims that inclusion of Article 5 of the Concordat does not impinge on citizens’ liberty in general.⁶⁹⁷ The difficulty with this argument is that once a priest has become an apostate, not only can he not practice his vocation within the Church, but he is also deprived of his right to any form of employment which brings him into contact with the public within the State. To the *laici* this is a punitive and monstrous form of discrimination against a citizen, with which the State should have nothing to do.

Lelio Basso (Psi) summarises the arguments against this provision in stating that Article 5 of the Concordat harms the independence of the State, (and, in fact, subordinates the State to the Church) by obliging the State to remove or ban from its employ those persons whom the Church intends to punish under its own laws. Preventing people from working for the State for religious reasons contravenes the principle of equality of citizens of the State.⁶⁹⁸ He is also concerned about the article *on religious education for the same reason: state schools must include Catholic religious education*, a right not afforded to other religions. He mentions that even schools in the Waldensian region must teach Catholicism, whereas the religion widely practised in that area is not allowed to be taught in its schools.⁶⁹⁹

Cappi (Psi) breaks ranks with the *laici*, and makes some unusual points. He observes that to deny that Church/State relations are currently dealt with by the Lateran Pacts, effectively means that the Concordat should be considered abrogated. Furthermore, if the Concordat were to be kept, what would be the point of stating that relations are governed by concordatory pacts? He admits that Article 1 of the Treaty causes him some concern, although, remarkably, Moro’s arguments and the formula “I loro rapporti sono regolati dai Patti Lateranensi” appear to be enough to convince him that the possibility of consequences harmful to the freedom of other religions are nullified.⁷⁰⁰

⁶⁹⁷ CRAC, vol. 6, pp. 725-6.

⁶⁹⁸ Ibid., p. 157.

⁶⁹⁹ Ibid.

⁷⁰⁰ Ibid., p. 153

In the Constituent assembly, Ugo Della Seta (Pri) praises the way in which various articles of the Constitution have raised the status of women and have dealt in general with the equality of Italian citizens, but asks how such articles can be reconciled with those found in the Pacts. He mentions article 5 of the Concordat dealing with apostate priests in the workplace and the permanent ban imposed on them, “quella pena che il Codice penale contempla come appendice alla pena dell’ergastolo, per i più gravi reati infamanti.”⁷⁰¹ He says that Article 36 of the Concordat contradicts the freedom of education article in the Constitution (draft 27) to the extent that children of non-Catholic families have two choices: either be educated against their religious beliefs or leave school. He also points out the discrepancies with the raft of laws in the Penal Code that ‘complement’ the confessional nature of the State as stipulated in the Pacts. He also questions the morality of two different sets of laws, depending on whether a crime is committed against the Catholic religion or any other religion. He says that the Constitution cannot talk of equality among citizens when such discrepancies exist in laws still in force. He advocates removing such discrepancies from the Concordat and from the Penal Code if the Constitution is to mean anything.⁷⁰²

Lelio Basso (Psi) criticises the Constitution on several fronts at this draft stage, but his most trenchant attack is reserved for article 5 of the Concordat.

Noi siamo fermamente decisi, ad accettare il principio concordatario e ad adoperarci per il mantenimento della pace religiosa. Ma . . . devo dichiarare che includere nella Costituzione l’articolo 5 del Concordato rappresenta per la nostra coscienza civile una grave offesa al principio di libertà. Non mi si dica, come ha affermato l’onorevole Tupini ieri, che la Chiesa cattolica, nella sua sconfinata saggezza, correggerà anche questi errori. Noi siamo chiamati oggi a votare questa Costituzione in cui si vuole inserire questo Concordato e questo articolo 5; e noi siamo chiamati a dare il nostro voto a quell’articolo che ha permesso, che ha servito a far tacere nell’Ateneo romano la libera voce di Ernesto Buonaiuti.⁷⁰³

Stefano Riccio (Dc) responds to a number of objections to the inclusion of the Pacts beginning with the fact that Article 1 of the Lateran Treaty “recognises and re-affirms” Article 1 of the Albertine Statute of 1848 which States that “the Holy Catholic Apostolic and Roman Religion is the only religion of State”.⁷⁰⁴ Such an

⁷⁰¹ CRAC, vol. 1, p. 180.

⁷⁰² Ibid., p. 181.

⁷⁰³ Ibid., p. 205.

⁷⁰⁴ See Pollard, *The Vatican and Italian Fascism*, p. 197.

article would, responds Crispo (Udn), recreate a confessional state in Italy. In defence of this, Riccio quotes the first clause of Article 1 of the Concordat, which states: “Italy, as per Article 1 of the Treaty, guarantees to the Catholic Church the free exercise of its spiritual power, the free and public exercise of worship, and also of its jurisdiction on religious matters in conformity with the rules of this Concordat; when necessary, it guarantees to all ecclesiastics, for the acts of their spiritual ministry, the support of its authorities.”⁷⁰⁵ This, he claims, proves that Italy will not become a confessional State, but simply one that recognises the important role the Church has to play in ministering to Italians, the majority of whom are Catholics. He suggests that “la semplice lettura della norma dà la risposta alle osservazioni.”⁷⁰⁶ Not only does this argument fall short of answering the charge by Crispo, but it fails to mention the second clause of Article 1 of the Concordat which reads: “In consideration of the sacred character of the Eternal City, episcopal See of the Supreme Pontiff, centre of the Catholic world and goal of pilgrimages, the Italian government will take care to prevent in Rome anything that might clash with that character.”⁷⁰⁷ This is a clear indication that, according to the terms of the Concordat, the government should not only prevent any kind of open challenge to the Catholic Church, but also seems to suggest that the other religions should not be allowed to enjoy too high a profile, at least in the capital.

Gerardo Bruni (Partito sociale cristiano) raises, once more, a vigorously dissenting Catholic voice. He is not impressed with the second clause of article 5 of the Constitution which, he argues, is concealing both article 1 of the Treaty and article 1 of the Albertine Statute, and bombards the Chamber with questions: Why the subterfuge? Why the lack of clarity? Why treat such important politico-spiritual problems so insensitively? “La Chiesa cattolica, onorevoli colleghi democristiani . . . non può passare dalla finestra! Deve passare dalla porta. E non dalla porta del confessionalismo, divenuta ormai porta di servizio, ma dalla porta, ch’è padronale per tutti, della democrazia.”⁷⁰⁸ Bruni talks at length about the defence of the Church’s freedom: argued from a democratic position, it would have everyone’s support,

mentre, se posta al di fuori di questi termini, getta l’amarezza anche nel cuore di molti cattolici, ai quali se il comma passerà tale e quale in questa

⁷⁰⁵ Ibid., p. 204.

⁷⁰⁶ CRAC, vol. 1, p. 390.

⁷⁰⁷ See Pollard, *The Vatican and Italian Fascism*, p. 204.

⁷⁰⁸ CRAC, vol. 1, p. 406.

Assemblea, com'è passato nella Commissione dei 75, non resterebbe davvero che augurarsi una cosa: che sia la Santa Sede stessa . . . a prendere l'iniziativa della necessaria ed improrogabile revisione, per non mettere il Governo italiano in gravi difficoltà.⁷⁰⁹

However, he says, it is up to them to avoid such a situation. He then gives a stern if not surprising warning: "La permanenza dei Patti lateranensi nella Costituzione, rilevò già l'onorevole Basso, provocherà purtroppo un appello all'O.N.U., appello le cui ripercussioni, morali e politici, potranno non essere simpatiche per il nostro Paese."⁷¹⁰

In a speech not easily reconciled with another in which, declaring himself not to be speaking for his party, he was critical of an arrangement which did not give equal rights to Protestants, Stefano Jacini (Dc) joins forces with those Catholic *costituenti* who display a cavalier disregard for the numerous arguments mounted by the opponents of the wholesale insertion of the Pacts into the Constitution. He considers the Lateran Treaty and creation of Vatican City State to be something which Italians should cherish and of which they should be proud. He cannot see how any future government could even think of jeopardising this position of prestige that Italy enjoys in Europe and indeed the world: "Quelle difficoltà che sono state affacciate da alcuni come incongruenze derivanti dalla incorporazione di questo trattato in seno alla costituzione Repubblicana mi sembrano . . . di scarsa importanza."⁷¹¹ As regards the official recognition of the Italian Republic by the Holy See, Jacini quotes from the 28.01.1947 edition of the *Acta apostolicae sedis* which reports the decree of 26.11.1946 of the Sacred Congregation of Rites which substituted in all cases the prayer *pro-repubblica* for the prayer *pro-rege* prescribed by the Concordat; he considers this to be "il più ampio e completo riconoscimento del nuovo stato di cose da parte della Suprema autorità ecclesiastica."⁷¹² This rather optimistic view is somewhat undermined by the fact that the prayer *pro-rege* remained unaltered in the Concordat.

Orazio Condorelli (Bnl) groups the *costituenti* who are against the Pacts into two, rather simplistic, categories: those who, he claims, have nothing against the Pacts *per se*, but who regard their inclusion in the Constitution as juridically and constitutionally unsound; and those who consider that the Concordat contains articles which contradict the principles of a democratic State. Condorelli doesn't accept

⁷⁰⁹ Ibid.

⁷¹⁰ Ibid., pp. 406-7.

⁷¹¹ Ibid., p. 418.

⁷¹² Ibid.

either of these arguments. As regards the former, he says that the main concern of his opponents is that inclusion would constitute a limitation on the sovereignty of the Italian State. This, he claims, is nonsense because Article 3 of the draft Constitution already subjects the Italian State to the norms of international law. But in his argument he concentrates on the Treaty, with a number of scatter-gun polemical comments: Are we going to argue over the loss of 44 hectares of national territory? How can we be creating a new Italy from scratch when it already exists? How do we have the right to denounce the Pacts when they have created Vatican City State? Once a State has been created by means of a Treaty it cannot be uncreated, so what is there to denounce?⁷¹³

Regarding article 5 of the Concordat, Condorelli (Bnl) argues that when a person becomes a priest, he is well aware of the contract he is entering into. So how can he then claim that the penalties imposed are a restriction on his freedom when he falls foul of his contract? Furthermore, he claims that the article is necessary to protect the needs of the vast majority of Catholics in the country. Who, for example, would want to send their children to a school that employed a priest who had incurred the wrath of the Church?⁷¹⁴

Condorelli then examines the criticisms against imposing religious education in State schools. He claims that if there was one child in ten thousand whose parents did not want him to have religious instruction, their choice would be respected. He adds that no-one would teach a child religion against his or her wishes.

With regard to Article 5 of the Concordat and the Buonaiuti case, Stefano Riccio (Dc) quotes from an article in 'Rinascita' by Professor Vezio Crisafulli.⁷¹⁵ Crisafulli suggests that the concordat with Italy is more burdensome than the one with Bavaria, in that in the latter, only the withdrawal of the right to give religious instruction is provided for, and not the withdrawal of all state employment rights of the cleric. In his response, Riccio deflects the argument away from the issue of the withdrawal of the basic rights of the cleric, which he admits is exactly what the Italian Concordat does, by saying: "Ma, dunque che insegnava il Buonaiuti, se non la Storia del cristianesimo? Ed allora perché scandalizzarsi tanto, quando anche nel

⁷¹³ A common ploy used by the parties opposed to the Left was to misrepresent the issue by claiming that not agreeing to the insertion of the Pacts, was tantamount to 'denouncing' them – a point hotly denied on numerous occasions by the Left wing parties.

⁷¹⁴ Ibid., p. 450.

⁷¹⁵ Jan-Feb Edition 1947, p. 15ff.

concordato con la Baviera . . . questo principio è riconfermato?”⁷¹⁶ Here he is perhaps admitting more than he intends to, but his attempts to justify it (by saying that because such an article appears in a concordat with another country, then it must be acceptable to Italy) are not hugely convincing.

Riccio’s next argument in favour of Article 5 of the Concordat is factually flawed: “In esso non si parla di qualunque ufficio ed impiego; né è detto che i diritti del funzionario apostato o irretito da censura non vadano conservati. Si parla soltanto dell’impiego e dell’ufficio a contatto immediato con il pubblico.”⁷¹⁷ Here he has already contradicted himself with his remarks about ‘the withdrawal of rights of the cleric’ in the Italian concordat. But let us take a close look at Article 5 of the Concordat. It states: “No ecclesiastic can be appointed to, or remain in any post or office of the Italian State or of any public body under its jurisdiction, without the nihil obstat (permission) of the Ordinary of the diocese. The withdrawal of the nihil obstat deprives the ecclesiastic of the capacity to continue to hold the appointment or position previously assumed. In any case no apostate or censored clergy can be appointed or kept in any teaching position, office or employment in which they would be in direct contact with the public.”⁷¹⁸ This is a very wide ranging article, in which the second clause plainly states that the ‘ecclesiastic’ is banned from ‘any’ post previously held. Moreover, the article encroaches on the jurisdiction of the State and also contradicts Articles 1, 6, 7, 8 and 16 of the draft Constitution. The third clause removes the rights of priests who worked with the public, in whatever capacity, to work in similar posts again, thus once more contradicting all of the above articles.

The reason for this third clause is interesting: in Riccio’s own words, “significa che si vuole evitare quella strana situazione di curiosità, che nasce nel popolo intorno al prete spretato, e si vuol evitare quel nocumento alla psicologia ed alla morale popolare, che fatalmente deriva dal contatto col prete apostato.”⁷¹⁹ He says that the priest is subject to ecclesiastical laws as well as State laws when employed on the Church’s behalf and freely accepts to work according to both sets of guidelines. For this reason his position is a special one and cannot be considered in relation to constitutional articles on freedom of choice and personal liberty.⁷²⁰

⁷¹⁶ CRAC vol. 1, pp. 390-1.

⁷¹⁷ Ibid., p. 391.

⁷¹⁸ See Pollard, *The Vatican and Italian Fascism*, Appendix II, p. 205.

⁷¹⁹ CRAC, vol. 1, p. 391.

⁷²⁰ Ibid.

Dossetti later adds to his argument in the subcommission, supporting Riccio's argument: the ruling does not apply to the Catholic population as a whole, but simply to ecclesiastics, who would have taken up their positions with the full knowledge of their responsibilities and the conditions and limitations attached thereto, and continues: "Quindi, possiamo dire che non siamo in presenza di una discriminazione legale della capacità, ma di una discriminazione consensuale, fondato sul consenso del singolo."⁷²¹ Furthermore, he points out, this article is not the only one to apply such a principle: he cites article 43 of the Concordat, forbidding ecclesiastics from participating in party politics; articles 7 and 14 of the administrative electoral law at the time, rendering them ineligible for the position of Mayor; the laws of 1913 and 1933 also exclude them from acting as notaries and from becoming lawyers.

But Cevolotto complains that he is not telling the whole story: the last clause of the article also says that they are 'prohibited from being members of, or taking part in, any political party'. The phrase 'taking part in' is vague and imprecise, and whether it covers supporting or canvassing for a political party is open to interpretation. What is clear is that during the institutional elections in 1946 not only Catholics priests, prelates, bishops and cardinals, but even the Pope himself 'supported' and 'canvassed for' the Dc.⁷²²

Dossetti stresses once again that the Dc's interpretation of article 1 of the Treaty is based on the spiritual and moral functions of the Church, and has nothing to do with the politically-motivated and fabricated incompatibilities between the Treaty, the Concordat and the Constitution highlighted by Cevolotto and Calamandrei. He points out that there is a textual argument in defence of article 1 of the Treaty as it appears in the Pacts: the phrase 'gli altri culti sono tollerati' (from the Albertine Statute) has been omitted, thus he says "non implica nessuna qualificazione deteriore, nessuna inferiorità giuridica di principio per gli appartenenti alle altre confessioni."⁷²³ In fact, Dossetti appears to trump Calamandrei, who has already used Mario Falco as an authority on the matter, by citing Falco to further his own case: "Il principio generale della irrilevanza della appartenenza alla Chiesa cattolica per la capacità giuridica dei cittadini è . . . riaffermato anche dopo l'articolo 1 del

⁷²¹ Ibid., p. 557.

⁷²² Pius XII gave a radio address to both Italy and France on the eve of the institutional and Constituent Assembly elections in June 1946 calling for Italian (and French) people to vote for Catholic candidates.

⁷²³ Ibid., p. 556. Both pre- and post-war, the treatment of Protestants by the authorities conflicts with this principle.

Trattato del laterano.”⁷²⁴ Thus, the scope of article 1 of the Treaty should not be artificially inflated; above all, he says, it should be realised that it does not have any rigid or predetermined juridical weight, but achieves its positive juridical significance from the body of law into which it is inserted. In conclusion, he sees no inconsistencies in article 5 (draft) of the Constitution, and claims that the explicit wording he insisted on for draft articles 14 and 15 (dealing with one’s freedom to worship in any faith one chooses) offers ‘decisive proof’ of the sincerity of his convictions on the subject.⁷²⁵

Dossetti categorically denies that the simple mention of the Pacts in article 5 of the draft Constitution is tantamount to the wholesale insertion of the Pacts into the Constitution. To support this, he re-emphasises the distinction between material and instrumental norms: material norms regulate facts or (political) relationships; instrumental norms simply define the method (*iter*) in which other juridical norms should be produced. The latter could eventually become the regulatory material norms defining a fact or a relationship. He argues that the third clause of article five is just such an instrumental norm. It does not have anything to do with the specific articles of the Treaty and the Concordat, but is intended purely for one purpose: “cioè che le eventuali norme dirette a modificare le norme contenute nel Trattato e nel Concordato debbono essere prodotte . . . attraverso un determinato *iter*, cioè l’accordo bilaterale.”⁷²⁶ Thus, according to this interpretation, he argues, all members of the Constituent Assembly have already given their support to the article, by dint of their declarations that relations between the Italian State and the Catholic Church should be governed by the concordatory system (again Dossetti is close to the wording of Togliatti’s proposal) and that unilateral modifications by the State of the existing regulatory system can only be achieved by means of a process of constitutional revision.⁷²⁷ Cevolotto picks up on Dossetti’s use of the phrase ‘sistema concordatario’ and asks why he cannot then accept Togliatti’s proposal. The

⁷²⁴ Ibid.

⁷²⁵ Ibid.

⁷²⁶ Ibid., p. 554.

⁷²⁷ Ibid. Dossetti is referring to a principle, used subsequently by the Court of Cassation in Italy, which distinguishes between those Constitutional provisions which take immediate effect, and those which have been referred to as ‘di natura programmatica’, which take time to implement or encase in legislation. The legitimacy of such a distinction has been questioned by jurists. (See Pestalozza, *La Costituzione e lo Stato*, pp. 52-3.) Dossetti’s use of the distinction is at least open to suspicion of manipulation on two counts. A wording such as Togliatti’s ‘in termini concordatari’ would have fitted Dossetti’s argument by avoiding both problems: in the first place, reference is made to specific Pacts and not to a kind of agreement required; secondly, the Pacts are in existence and their mention in the Constitution, without any reference to a specific need for revision many of the *costituenti* were calling for, clearly refers to them as already in existence and accepted.

response is given later in the debates by De Gasperi, that it would have been quite satisfactory if Togliatti and others had not made so many allegations of incompatibility between certain individual dispositions of the Concordat and some articles of the Constitution.⁷²⁸

De Gasperi's response should not be seen as the inept lapse in logic it appears at first sight. Togliatti's proposal was formulated precisely to avoid the incompatibilities that were raised by the Catholics opponents. Indeed, it would have done so, and De Gasperi is perfectly aware of this. Nor should it be assumed that he is suggesting that his opponents did not have every right to raise such objections. What, in fact, he seems to be doing is placing the blame for a rise in tension and hostility over the question squarely on the shoulders of his opponents. The Catholics might have responded more favourably, as he claims, if they had not met with a barrage of objections which inevitably came across as anti-Catholic. De Gasperi's response provides a useful insight into the highly-charged atmosphere of what was, by common consent later attested to by all the participants, the most contentious part of the debates on the Constitution.

For reasons of formality and substance, Edgardo Lami Starnuti (Psli) is not happy with the inclusion of the Pacts. The formal reason is that nowhere in the Constitution does the Italian State have recourse to mentioning treaties with any other juridical entities within international law. The substantial reason is that he considers the Lateran Treaty not to require any such acknowledgement: "Sta a sé e vivrà, nel senso che nella sua essenza non è più discusso o minacciato da alcuno. Il Trattato, in quella parte che risolve la questione romana, lo consideriamo anche noi definitivo."⁷²⁹ He declares his party morally unable to accept both articles 1 of the Treaty and 5 of the Concordat. Moreover he claims that he has yet to hear a convincing argument for the inclusion of the Concordat in the Constitution. The Dc argue that it must be included because it regulates relations between the State and the Catholic Church. But as Lami Starnuti points out, the Concordat, like the Treaty, will survive non-inclusion in the Constitution just as it has survived up until that point in time as a stand-alone document. Although the Psli would be in favour of maintaining Church/State relations by means of a concordat,

il richiamo al Concordato nella Costituzione avrebbe come conseguenza che nessuna modifica sarebbe possibile portare al Concordato medesimo senza la

⁷²⁸ Ibid.

⁷²⁹ Ibid., p. 620

revisione della Carta costituzionale e che questa necessità costituirebbe una intollerabile limitazione della libertà e della sovranità dello Stato italiano.⁷³⁰

The principle of the equality of all citizens is, for Republicans, non-negotiable. It is, however, undermined by several of the articles of the Concordat mentioned earlier. Della Seta places particular emphasis on draft article 28, dealing with state education, and its incompatibility with article 36 of the Concordat. How, he asks, can the Catholic Church, not content with having its own private, confessional schools and not content with having inserted an element of religious education into the state school system, demand, through article 36 of the Concordat, that all state education at infant and primary level should have “come fondamento e come coronamento l’insegnamento della dottrina cristiana secondo la forma ricevuta dalla tradizione cattolica”?⁷³¹ Such a demand, he says, is an outrage and violates the freedom of all non-Catholic children and their parents who wish to avail themselves of a secular state education. He also strongly criticises the law that stipulates a harsher penalty for crimes committed against Catholicism than those committed against the minority religions: “tutto questo, non solo a rispetto delle minoranze, ma a difesa del buon nome della patria, deve essere dalla legge abolito.”⁷³²

Amerigo Crispo (Udn) makes a very interesting point regarding the Pacts and their insertion in the Constitution: Vatican City State still had recourse to the death penalty for certain crimes under article 4 of the *legge vaticana* of 7th June 1929. The Lateran Pacts, referring in a number of instances to Vatican law, once inserted into the Constitution with its array of articles dealing with all aspects of Italian State law, had forced a connection between the two juridical systems, and thus created yet another very serious point of contention between the two legislatures.⁷³³ This comprised a grey area, especially in the field of Church/State relations, where both legislatures at certain points contradicted or contravened the legislation of the other. This phenomenon had been largely ignored under the liberal governments and under Fascism. But the nascent republican Constitution, and the Holy See’s insistence on the Lateran Pacts forming the basis of Church/State relations under that constitution, brought the issue back into focus, and the lay jurists in the Assembly had become uneasy. Some Dc deputies, like Igino Giordani, tried to reassure them with recourse to a formula about the Church’s widely-known generosity which gave the appearance

⁷³⁰ Ibid., p. 621.

⁷³¹ Cited in CRAC, vol. 1, p. 618.

⁷³² Ibid.

⁷³³ Ibid., p. 679.

of being rehearsed: “c’è la valvola di revisione o di ‘qualsiasi modificazione bilateralmente accettata’. E noi conosciamo dall’esperienza quanto generosa e indulgente sia la Chiesa nell’accedere ad istanze ragionevoli.”⁷³⁴ Others, like Francesco Saverio Nitti (Udn) tried reasoning with the Dc for changes to be made: although the Pacts have to be reconfirmed by the Assembly (having been accepted at subcommission level, but not yet ratified by the full Assembly), they contain controversial elements which in future might need changes “volute consenzialmente e imposte dalle necessità.”⁷³⁵

(ii) Overlap of ecclesiastical and state legislature

Subcommission 1

As we have seen, incorporating the Lateran Pacts in the Constitution was, for the Dc and the Catholic Right, non-negotiable. The implications their inclusion would have for Italian State law, however, needed a great deal of clarification. As mentioned in Section A2, prior to the Lateran Pacts, the Law of Guarantees regulated any discrepancies or overlap between ecclesiastical and state legislation. According to article 17, appeals against decisions made by the ecclesiastical authorities had to be made through the civil courts and in matters where ecclesiastical law overlapped or contravened civil law, the latter took precedence over the former. Hence, on a legal level, the Church was subordinate to the State. This situation was changed by the Lateran Pacts and thus it became a key reason for the inclusion of the Pacts in the Constitution so that the independence (some might even argue ‘supremacy’) of ecclesiastical legislation could be maintained. In Subcommission 1, Dossetti immediately tries to diffuse the issue by saying that “la legislazione ecclesiastica ha vigore in Italia appunto in quanto nella legislazione italiana vi è un esplicita rinvio ad essa. È questo il principio del rinvio che non menoma affatto la sovranità dello Stato.”⁷³⁶ This is, however, highly unsatisfactory to the *laici* since such referral to ecclesiastical law can also be seen as a case of subordination in the Italian legal system.

Moro rather clumsily asks whether article 5 refers to international treaties (ie. which would include the Lateran Treaty), or to international rules in general. He says: “Deve essere chiarito cioè se i trattati, una volta stipulati, facciano parte di

⁷³⁴ Ibid., p. 438.

⁷³⁵ Ibid., p. 485.

⁷³⁶ CRAC, vol. 6, p. 725.

diritto, senza bisogno di una legge applicativa, dell'ordinamento dello Stato italiano.”⁷³⁷ This seems like an attempt to clarify how much legal tampering will be required to insert the Lateran Treaty into the Italian legal system. Moro appears to have somewhat upset proceedings and almost created problems for his own side by bringing in this question before the general discussions on the relationship between treaties and the new constitution have been completed. Dossetti intervenes to deflect the discussion from Moro's question by making observations on categories of international rules of law: “bisogna distinguere: norme di diritto internazionale generale; norme di diritto internazionale positivo (i trattati); accordi tra Stato e Chiesa.”⁷³⁸ These observations seem to be a deliberate attempt to put some distance, for the meantime, between discussions on treaties and discussions on Church/State relations which, in the case of the Pacts, were inextricably linked.

Francesco De Vita (Pri) observes that problems of Church/State relations, soluble on political terrain, have slipped quite insidiously onto a juridical level. He uses the Church's control over matrimony to highlight the problem of sovereignty. “Riconoscendo, quindi, la sovranità della Chiesa, si vengono a porre gravi limiti alla sovranità e ai poteri dello Stato.”⁷³⁹

Basso (Psi) says that his only concern is that one must affirm in the Constitution the principle that the State should not return to a situation where the doctrine of natural law is dominant, in other words, that the Church is not allowed to legislate on a matter that is strictly the State's responsibility, nor in matters where both sides have responsibility. Spiritual matters are in the hands of the Church; an amendment he proposes allows relations with the State to be governed on a concordatory basis. He says that no serious argument can be put forward to such a provision which, he says, gives the maximum guarantees to the Catholic Church. There is no doubt, he says, that on a juridical level, the arguments adopted demonstrate that the details of the existing Pacts are not to be included in the Constitution and thus considers the proposal by Subcommittee 1 to be unacceptable to the Socialists' juridical consciences.⁷⁴⁰

⁷³⁷ Ibid., p. 779.

⁷³⁸ Ibid.

⁷³⁹ Ibid., p. 782.

⁷⁴⁰ Ibid., p. 157.

The issue of overlap of State and ecclesiastical legislature was also dealt with briefly in Subcommission 2(ii). Like De Vita in Subcommission 1, Calamandrei's original proposal was quite unequivocal:

Il potere giudiziario appartiene esclusivamente allo Stato che lo esercita per mezzo di giudici indipendenti, istituiti e ordinati secondo le norme della presente Costituzione e della legge sull'ordinamento giudiziario. Le sentenze e gli altri provvedimenti dei giudici sono resi in nome della Repubblica.⁷⁴¹

Calamandrei argues that "l'affermazione della statualità della giurisdizione esisteva già nello Statuto Albertino, che diceva: 'La giustizia emana dal Re'."⁷⁴² He goes on to point out that there could be problems with sentences passed by ecclesiastical tribunals but since these are recorded by the Court of Appeal they come under the jurisdiction of the State anyway.⁷⁴³

Pietro Castiglia (Udn) attempts to resolve the concerns over non-State jurisdictional provisions with the second clause of his alternative proposal: "le sentenze e gli altri provvedimenti giurisdizionali degli Stati stranieri, dei Tribunali ecclesiastici per gli effetti civili . . . possono nello Stato avere efficacia nei casi, nei limiti e nei modi stabiliti dalle sue leggi."⁷⁴⁴ He claims that recognising the *effectiveness of these sentences will not have an adverse effect on the principle of State jurisdiction*, according to the wording of his proposal.

Calamandrei does not consider it opportune to include in the Constitution any questions which could be considered exceptions to the fundamental principle of the statality of judicial power. He says that if the Concordat were to remain in force, then the recognition of the executive nature of sentences passed by ecclesiastical tribunals in matrimonial matters would be on a par with the principle of the statality of judicial power. To debate such matters would be beyond the remit of the Subcommission.⁷⁴⁵

Aldo Bozzi (Udn) emphasises that the

riconoscimento dell'esecutività delle sentenze ecclesiastiche in materia matrimoniale . . . non intacca affatto il principio della statualità del potere giudiziario, perché in tanto le sentenze dei Tribunali ecclesiastici hanno

⁷⁴¹ CRAC, vol. 8, p. 1910.

⁷⁴² Ibid.

⁷⁴³ Ibid., pp. 1910-11.

⁷⁴⁴ Ibid., p. 1913.

⁷⁴⁵ Ibid., pp. 1913-14.

vigore in Italia, in quanto lo Stato lo ha consentito, proprio nell'esercizio della sua sovranità.⁷⁴⁶

So as we can see, Subcommittee 2(ii) had a much greater awareness of the importance of the State maintaining its independence and sovereignty in juridical affairs than Subcommittee 1. One of the reasons for this could have been its formation: the Dc had put most of its experienced jurists and highly politicised young politicians (in other words, the 'big guns') into Subcommittee 1 where they realised that Church/State relations would be the key area of debate. The lay parties tended to concentrate their legal specialists in the other subcommittees.⁷⁴⁷

Constituent Assembly

Having dedicated some of his studies to a Tuscan reformer of the 19th century, Piero Guicciardini, and had this work published simultaneously by *l'Osservatore Romano* and *Rivista valdese*, Stefano Jacini (Dc) hopes that his brothers in the other religious denominations do not find any hint of intolerance in his speech. He fears that his objectivity in this instance will not endear him to his own group and so he will speak independently of them. He considers that the distinction between the four aspects of Church/State relations has not been adequately delineated. The first point is that some Deputies have talked as if Church/State relations were governed by the Lateran Treaty:

Il che non è: il Trattato del Laterano è un Trattato diplomatico che si informa direttamente al diritto internazionale e si riferisce alle relazioni fra lo Stato italiano e la Santa Sede. Vi è poi il Concordato, che riguarda i rapporti fra Stato e Chiesa in Italia, rapporti di carattere pubblico esterno, ma non di carattere internazionale. In terzo luogo deve considerarsi la posizione dei culti acattolici, che sono regolati da una legge interna dello Stato italiano [i.e. the *culti ammessi* laws]. E vi sono infine i bisogni, i desideri, le aspirazioni, le tendenze, i diritti dei cittadini italiani, in quanto cattolici, i quali costituiscono materia di legislazione interna, in cui la Santa Sede non interviene, se non come spettatrice benevola, non certo come parte in causa.⁷⁴⁸

Orazio Condorelli (Bnl) ties himself in a knot when he acknowledges that it is only at the point where Church matters and State matters overlap, with potential conflict, that there is need for concordatory negotiations, but then sees the problem, and locus of this conflict for the *laici*, also as the solution: "era ben logico che nella

⁷⁴⁶ Ibid., p. 1916.

⁷⁴⁷ See Appendix II.

⁷⁴⁸ CRAC, vol. 1, p. 417.

formulazione della norma costituzionale si uscisse dall'astratto, e si venisse al concreto, dicendo: i rapporti sono regolati dai Patti lateranensi.”⁷⁴⁹

None of the parties have suggested nullifying the Lateran Pacts, according to Carlo Bassano (Pdl), even though it is generally accepted that in many instances they contradict the terms of the new Constitution. He also points out that it would be highly unusual for a Treaty to become an integral part of a Constitution. Ruini has called for the Pacts to be added to the Italian legislature, but as Bassano rightly points out, they have been part of it since the law of 27th May 1929, no. 810.⁷⁵⁰ Consequently, he says, there is no need to refer to the Pacts in the Constitution, particularly since this would result in the Italian State finding itself in a position of inferiority in relation to the Church; a position which, as Calamandrei has already pointed out, would be consolidated and aggravated by the second part of the clause which states that “qualsiasi modificazione dei Patti, bilateralmente accettata, non richiede procedimento di revisione costituzionale.”⁷⁵¹

Indeed, D'Avack confirms Calamandrei's argument: by including the Lateran Pacts not only does the State accept the independence and sovereignty of the Church, but in negotiations on matters ecclesiastical the Church will not only have an equal footing with the State but will, in any matters covered by articles in the Treaty or the Concordat, be the dominant party (with the same rights as any nation-state).⁷⁵²

(iii) Amendments to the Pacts

Both of the above issues – problems with the Treaty and Concordat and the overlap of Church/State legislation – bring us on to the next point, which is a natural progression: whether it is opportune, possible and, more importantly, acceptable to the Church to amend the Pacts prior to their insertion in the Constitution.

Subcommission I

Cevolotto thinks that relations between the State and the Catholic Church should be included within the framework of religious freedom and relations with churches of all faiths. As for formal agreements currently in force, such as the Lateran Accords, they should not be mentioned in the Constitution but should be dealt with by special legislation, which should in turn be guided strictly by the Constitution. However, he

⁷⁴⁹ Ibid., p. 447.

⁷⁵⁰ Ibid., pp. 535-6.

⁷⁵¹ Ibid., p. 536.

⁷⁵² D'Avack, *I rapporti fra Stato e Chiesa*, pp. 101-4.

does say that given the changes to the Constitution (i.e. the Statuto Albertino which until 1st January, 1948 was still in force) he thinks it would be necessary to amend article 21 of the Treaty and articles 12, 20 and 42 of the Concordat.⁷⁵³ Cevolotto dismisses Dossetti's concerns regarding prior modification of the Lateran Pacts, which he deems absolutely necessary if they are to be inserted in the Constitution. Like Luigi Einaudi (Udn) he is concerned in particular with Article 5 of the Concordat in relation to apostate priests, article 34 which includes the implicit abdication of the State's right to control matrimony, and article 36 dealing with religious education.⁷⁵⁴

The battle lines are immediately drawn when Dossetti warns that if the Constituent Assembly attempts to make amendments to this bilateral agreement it risks destroying the distinction between the two parties and "annullando quel principio di libertà che si vuole affermare".⁷⁵⁵ In what appears to be an attempt to test the nerve of the revisionists in the Subcommittee, Dossetti says that nothing is preventing the State from asking the Church to modify certain clauses of the Concordat. He says this safe in the knowledge that the Church would object so vociferously that it would cause serious embarrassment for the Assembly and the government.⁷⁵⁶ In another attempt by Dossetti to put the Subcommittee to the test, and in response to grave concerns about Article 5 of the Concordat, he says that if it is so unacceptable to the other parties, then the only legitimate course of action would be "che lo Stato italiano facesse presente alla Chiesa l'intolleranza di una vaste parte dell'opinione pubblica nei riguardi del suddetto articolo e ne chiedesse la soppressione o la modificazione."⁷⁵⁷

Togliatti (Pci), who by this time has modified his position, recognises the difficulty of the situation: the reality of the existing Pacts, the principle of the independence of the State from the Church and the complete liberty of conscience and cult. He states that none of the parties want to demand modification of the Pacts at the price of nullifying those in existence, but points out the discrepancy between the Pacts as regards the religion of state and the constitutional aim of equality of rights for all religions. He proposes a solution to this problem, different from his original 'termini concordatari' proposal, by suggesting that the Church "regola i suoi

⁷⁵³ ACD, Busta 74, Fascicolo 1, Commissione per la Costituzione: 1° Sottocommissione. Relazione del Deputato Mario Cevolotto sui 'Rapporti fra Stato e Chiesa (Libertà religiosa)', pp.37-42.

⁷⁵⁴ CRAC, vol. 6, p. 719.

⁷⁵⁵ Ibid., p. 720.

⁷⁵⁶ Ibid.

⁷⁵⁷ Ibid., p. 759.

rapporti con lo Stato per mezzo dell'esistente Concordato.”⁷⁵⁸ He declares himself against the insertion in the Constitution of a reference to the independence of the Church from the State which is more suited to a treaty of public law or of philosophy.⁷⁵⁹

It gives Umberto Merlin (Dc) a great deal of satisfaction to know that Togliatti both accepts the indissolubility of the Pacts and that he does not want to disturb the *pace religioso* that exists in Italy. He disagrees with Cevolotto who, he claims, wants the destruction of the Concordat inasmuch as he attacked the Church's right to sole jurisdiction in the fundamental areas of marriage and the competence of ecclesiastical tribunals in matrimonial matters, on which Merlin later affirms that “la Santa Sede si dimostrerà assolutamente intransigente.”⁷⁶⁰ Merlin assures the Assembly that “la Chiesa . . . ha già cominciato essa stessa a modificare alcune disposizioni del Concordato, come quelle relative al giuramento dei Vescovi e alle preghiere per il Capo dello Stato.”⁷⁶¹ Merlin says that only when Cevolotto accepts that the Treaty and the Concordat must not be touched can they find agreement.⁷⁶²

Marchesi states that the Communists have never and would never deny the international juridical nature of the Holy See nor call for any changes to the Pacts. He only requires that the Constitution should not be bound by the Concordat's rules which he hopes will survive until circumstances and the wisdom of the two contracting parties move with the juridical and political conscience of the times.⁷⁶³

Cevolotto launches into a detailed argument against the inclusion of the Pacts in the Constitution. His first point is that there is no need for the Pacts to be included: “i Patti Lateranensi sono ormai una realtà indistruttibile” and no-one wants to destroy Vatican State, but exactly because they continue to exist there is no need to mention the Pacts nor any other treaty.⁷⁶⁴ Moreover within the Pacts there are transitory sections which can be modified in the future thus avoiding the need to crystallise the Treaty with the Holy See in the Constitution. He argues that international treaties are

⁷⁵⁸ Ibid.

⁷⁵⁹ Ibid., p. 721.

⁷⁶⁰ Ibid., pp. 723-4.

⁷⁶¹ Ibid., p. 724.

⁷⁶² Ibid.

⁷⁶³ Ibid., p. 759.

⁷⁶⁴ D'Avack agrees with this assessment of the situation: “anche senza questo espresso e formale richiamo della norma costituzionale, i Patti Lateranensi avrebbero continuato a conservare pieno valore ed inalterata efficacia sia nell'ordine internazionale, sia in quello interno italiano.” D'Avack, *I rapporti fra Stato e Chiesa*, p. 107.

continually being modified and including the Treaty in the Constitution would impede the process of any future modifications of it.⁷⁶⁵

Merlin (Dc) pronounces himself in favour of Togliatti's proposal as one which will not disturb the religious peace in Italy. He says that both Togliatti and Marchesi are substantially in agreement with the Christian Democrat members as regards relations being conducted "in termini concordatari" and not tampering too much with the Pacts.⁷⁶⁶

What follows after Merlin's accommodating response to Togliatti is perhaps the perfect illustration of De Gasperi's comments mentioned earlier, in relation to the opposition's provoking hostility. Merlin had just suggested that the Dc might accept Togliatti's 'in termini concordatari'. He even goes so far as to say that in relation to the problematic article 5 of the Concordat, Dc members of the Subcommission, "anche essi sono contrari al famoso articolo 5", and then ends on the defensive note "che però, ha avuto una sola applicazione nel caso Buonaiuti."⁷⁶⁷ But instead of letting this defensive comment pass, not even the supreme conciliator Togliatti can stop himself from replying that "quell'articolo è stato applicato anche in un altro caso, riguardante un prefetto."⁷⁶⁸ Instead of consolidating a movement towards harmony, a momentary lapse is transformed at least in terms of the atmosphere of the exchange, into an irredeemable blunder. In the few seconds it must have taken for Togliatti to indulge his corrective instinct, Merlin's own attitude is itself transformed into one of barely concealed implacable opposition. He responds as if speaking on behalf of the Holy See:

la Santa Sede non sarebbe forse aliena dal consentire ad una modifica di quell'articolo, quando le si facesse presente che esso non corrisponde più al nuovo clima del Paese, dopo aver preso la solenne deliberazione di inserire i Patti Lateranensi nella Costituzione.⁷⁶⁹

The article [5 of the Concordat] towards which the Dc members were themselves opposed has now become one which the Church might be willing to modify once it has been demonstrated that it no longer corresponds to the new climate in the nation. But even this, Merlin now makes clear, after the "solenne deliberazione" to include the Pacts in the Constitution. He now claims that if they were to vote for Togliatti's

⁷⁶⁵ CRAC, vol. 6, p. 783.

⁷⁶⁶ See *ibid.*

⁷⁶⁷ *Ibid.*

⁷⁶⁸ *Ibid.*, p. 784.

⁷⁶⁹ *Ibid.*

proposal, the Holy See might suspect that they are actually calling for a new Concordat – something which the Dc party must vote against. Merlin invites them to support the President's proposal with the proviso that the articles such as the one in question, might be reviewed by both parties when appropriate to do so.⁷⁷⁰ It is very clear that beneath the juridical, and other, arguments on this issue there lay sensitivities ready to erupt.

All Togliatti can do now in response is to claim that the Communists have no intention of even bringing up the problem of a revision of the Pacts, although they consider that the arguments presented so far have not succeeded in justifying the inclusion of the Pacts in the Constitution.⁷⁷¹

Basso doesn't understand the reason for including the Lateran Pacts in the new Constitution since Catholics have never called for them to be inserted into the Albertine Statute. He says that in order to secure the future of the *pace religiosa*, it would be useful for Italy to have a Concordat approved by a government which is a legitimate expression of the people's wishes.⁷⁷² He says that the concept of the accords with the Holy See complies with the wishes of the Italian people, but the individual decrees do not, and some need to be modified or updated. He states that no-one, including the Socialist party, wants to disturb the *pace religiosa*. However, the Socialists do want this peace to rest on a solid base, not a Concordat which contains decrees contrary to their juridical and civil consciences. He declares that the modification of some of the articles is necessary and that moreover one cannot at the same time declare that the Concordat should be inserted wholesale into the Constitution. He then points out some of the discrepancies: article 5 offends two demands of the Constitution – the independence of the State and equal status of citizens; article 36 talks of religious education as based on the principles of the Catholic Church and thus offends the equal status of citizens belonging to different faiths; and article 20 relating to bishops being sworn in by the king. He adds that his party sees no problem in affirming the independence of the Church and other principles of a constitutional nature; but they do not want the wholesale insertion of the Concordat. He recognises that the Concordat brought the *pace religiosa* to Italy, but considers it perfectly acceptable not to recognise that the specific form given at that time to the document is compatible with current circumstances.⁷⁷³

⁷⁷⁰ Ibid.

⁷⁷¹ Ibid.

⁷⁷² Ibid., p. 785.

⁷⁷³ Ibid., p. 786.

The second clause as it was proposed by the first Subcommission does not cause Mortati (Dc) concern: juridically and politically, he thinks it is the natural progression of the first and has the added benefit of preventing the State from acting unilaterally in an area which clearly needs bilateral agreement. He thinks Togliatti's amendment is absurd as it would stipulate relations negotiated on a concordatory basis while ignoring the Concordat currently in force. He says another absurd scenario would follow if the Church were to dig its heels in on matters of State sovereignty, since there would always be the possibility of a revision of the Concordat.⁷⁷⁴

Giua (Psi) brings a vigorous, if not juridically precise argument back to the Fascist question. By accepting in full the Pacts, the Dc party is creating links, whether it wants to or not, with the work of Fascism (which, he says, was not the choice of the Italian people). If they are arguing that the Lateran Pacts are the direct manifestation of the wishes of the Italian people, then why can they not accept that Church/State relations are regulated on a concordatory basis? Plainly, if the Italian people have already demonstrated their wishes then there is no need to go backwards (i.e. and throw out the Lateran Pacts). But why, he asks, close the door on future pacts that might arise between the Vatican and the Italian State which might even improve on existing ones. He says the Dc's position – that the Lateran Pacts are non-negotiable – is a principle he cannot accept. The Pacts are synonymous with Fascist politics, and when the Italian people consider that the time is right to discuss those politics more seriously, they have the right to review the Pacts.⁷⁷⁵

Terracini (Pci) admits that although the annulment of the Treaty and Concordat is not possible, neither can they be cast in stone. Due to the sense of continuity that the Constitution must have, every contractual arrangement (including the Lateran Pacts) must be subject to amendment. He points out that Moro himself has recognised that several articles in the Concordat can already be considered invalidated, which raises the question of whether they can insert into the Constitution a pact which does not exist in its entirety.⁷⁷⁶

⁷⁷⁴ Ibid., p. 153.

⁷⁷⁵ Ibid., pp. 153-4.

⁷⁷⁶ Ibid., p. 155.

Calamandrei announces his (albeit extremely hypothetical) willingness to co-operate with Dc demands: in future debates on this article he could be agreeable to the Constitution expressly including all the articles of the Lateran Pacts; he would also agree to the Italian Republic openly proclaiming itself to be a confessional state. But if this is to be the case, he says, it must be stated clearly and not furtively slipped in with a whispered reference to it so that anyone without knowledge of the Pacts would not realise that many of its articles contrast with the articles of the Constitution. Calamandrei mentions that while in America, De Gasperi met representatives of 25 protestant religious groups who asked him if the Lateran Concordat would be included in the Constitution. De Gasperi replied that he didn't believe the 'terms of the Concordat' would be included. Calamandrei says this was the truth – they have not been expressly included, they are only there by implication. But he says the Constitution must be read in the light of their inclusion. So that to article 5 (draft) of the Constitution stating that Church and State are independent and sovereign, one must add article 1 of the Treaty stating that Catholicism is the religion of State. He goes on to cite other examples: article 7 (draft) and article 5 (Concordat); article 27 (draft) and article 36 (Concordat); article 94 (draft) and article 34 (Concordat).⁷⁷⁷

In yet another example of Stefano Riccio (Dc) either talking with some authority, making a big assumption, or attempting to appease the Left with rhetoric, he suggests that “se qualche modifica sarà ritenuta necessaria, lo Stato potrà proporla e l'accordo certamente sarà raggiunto con la Chiesa.”⁷⁷⁸ Riccio also addresses amendments by Bruni and Crispo to the wording of Article 5 (draft) in relation to the discrepancies between various articles of the Concordat and of the Constitution: Bruni's amendment brought in a reference to the aconfessionality of the State and the equality of rights laid out in articles 5, 14 and 15 (all draft) and contradicting Article 5 of the Concordat. Crispo suggested the following amendment to Article 5 of the Constitution: “sono regolati dai Patti lateranensi, in quanto non siano contrari alla presente Costituzione.”⁷⁷⁹ He points out discrepancies between Article 36 of the Concordat on religious education and Article 27 (draft) of the Constitution on

⁷⁷⁷ Although he uses these examples, as he says, only to highlight the need for clarity in the methodology of constructing the new Constitution, it is clearly an opportunity for him to question the merit of including the Lateran Pacts in the Constitution and reinforce his case for amendments to the Pacts. CRAC, vol. 1, p. 161-2.

⁷⁷⁸ Ibid., p. 385.

⁷⁷⁹ Ibid., p. 390.

freedom of art and science and between Article 34 of the Concordat on ecclesiastical jurisdiction and Article 94 (draft) of the Constitution which declares the sole jurisdiction of the State on Italian territory.⁷⁸⁰

Riccio makes a rather bullish and, in the light of the numerous points raised in the debates, extravagant assertion: “Diciamo subito che non vi è nei patti lateranensi nulla che contrasti con i principi di libertà e di eguaglianza dei cittadini.”⁷⁸¹ He mentions article 6 (draft) as laying out the foundations of man’s social and economic dignity, but then says ‘how much more important it is for man to seek ethical and religious dignity’. He argues that if Catholics believe that this is where their true salvation lies then no-one can deny them this. Riccio appeals to the *costituenti* to leave the Pacts untouched by referring to the wishes of many in the Assembly, including Togliatti, that

I problemi già risolti nel passato non ci interessano più, ma cerchiamo che quelle posizioni che hanno conquistato i nostri padri, i nostri avi, attraverso lotte memorabili, e che hanno un valore permanente, in quanto rappresentano conquista della nostra coscienza, non vadano perdute.⁷⁸²

Gerardo Bruni (Partito sociale cristiano) sees the issue of amending the Pacts as a clear choice:

O fare lo Stato confessionale, con tutte le sue logiche conseguenze, come esplicitamente lo vogliono i Patti lateranensi, e, in tal caso, bisognerebbe modificare sensibilmente gli articoli 7 e 14, o fare lo Stato aconfessionale, come lo vogliono gli articoli 7 e 14, ed allora bisogna sopprimere o modificare il secondo comma dell’articolo 5 . . . Qui non è soltanto questione di logica, ma di elementare onestà . . . La legislazione italiana sui rapporti tra Stato e Chiesa non può continuare a dibattersi . . . in una continua contraddizione, in un continuo compromesso tra vecchio e nuovo, che turba la pace della Nazione.⁷⁸³

This is the clearest analysis of the problem thus far by a *costituente*. Bruni describes the Pacts as a foreign body which, if included in the Constitution, would strike a fatal blow to ‘our young, emerging Republic’. He suggests the following amendment to

⁷⁸⁰ Article 94 (draft) states, “La funzione giurisdizionale, espressione della sovranità della Repubblica, è esercitata in nome del popolo.”

⁷⁸¹ Ibid.

⁷⁸² Ibid., p. 391.

⁷⁸³ Ibid., p. 406. All the articles referred to by Bruni in all extracts of this speech are articles of the Constitution, except where indicated otherwise. However, he is confusing the issue by referring to final article 7 and draft articles 14 and 15 at the same time. Draft article 5 (final article 7) had by this time undergone a series of voting, with some deputies referring to its new final article number and others still referring to the original draft number, hence the confusion.

the second clause of article 5 (draft): “I loro rapporti sono regolati dai Patti lateranensi, in quanto non entrino in conflitto con il carattere aconfessionale dello Stato e con il principio di uguaglianza dei diritti di cui agli articoli 7, 14 e 15 della presente Costituzione.”⁷⁸⁴ This would, he says, avoid any conflict between both the aconfessionale nature of the State, as he envisages it, and articles 7 and 14 (draft). In this way the revision, but, he emphasises, only the revision, of the Pacts remains constitutionally possible. Future legislation could result directly from the application of these articles without embarrassment for the legislators. In this way the Italian State could approach any future bilateral negotiations for the revision of the Pacts from a position of strength, using the aconfessional character of the State to ensure equality of rights for all citizens whatever their religious beliefs.⁷⁸⁵

Bruni then attempts to reason with his opponents:

Questa mi pare essere la sola via della sincerità, dell'onore, della saggezza politica. Gli onorevoli colleghi democristiani non possono negare ragionevolmente il loro appoggio al mio emendamento senza farci sorgere il sospetto che si voglia giocare coll'articolo 5 [i.e. of the Concordat] per eludere, almeno in parte, ciò che si dice negli articoli 7, 14 e 15. (*Commenti al centro*). Io l'ho presentato nella supposizione che si voglia mantenere in piedi l'impalcatura dell'articolo 5 [Concordat], mentre dichiaro che sarei pronto a ritirarlo qualora si giudicasse preferibile includere la menzione dei Patti, per esempio, tra le ‘disposizioni transitori e finali’, in attesa della loro revisione, o qualora, in altra parte qualsiasi del testo, fosse comunque fatta con quelle cautele che sono nello spirito del mio emendamento.⁷⁸⁶

Comparing the problems faced by the Church when it secured the Lateran Pacts for itself, to the post-war atmosphere of liberty and co-operation, Concetto Marchesi (Pci) says,

Di fronte al fascismo violatore di ogni coscienza e di ogni libertà, la Chiesa cattolica affermava la proprio supremazia morale e sopra i deliri di una scomposta tirannia, poneva la stabilità e l'altezza del suo insegnamento religioso. Ma . . . oggi è la stessa cosa? Interpretando il primo articolo del Trattato . . . giungereste alle medesime conclusioni di allora, del 1929? Oggi, in cui l'onorevole La Pira, ferventissima anima cattolica, nel quattordicesimo articolo della sua relazione, propone che ogni cittadini abbia la libertà di esprimere con ogni mezzo le proprie opinioni e i propri pensieri, oggi noi stiamo certamente in una diversa situazione . . . Già la modificabilità dei Patti lateranensi era affermata nell'articolo 44 del Concordato, il quale diceva: ‘Se in avvenire sorgesse qualche difficoltà sulla interpretazione del presente Concordato, la Santa Sede e l'Italia procederanno di commune intelligenza ad

⁷⁸⁴ Ibid., p. 409.

⁷⁸⁵ Ibid.

⁷⁸⁶ Ibid., p. 409.

una amichevole soluzione.’ Si parla di interpretazione, ma noi sappiamo, e la Chiesa sa, e voi sapete, che interpretare significa spesso creare, e l’interprete è spesso ricreatore.⁷⁸⁷

He then mentions that the Pope himself has indicated that there may be the possibility of revising certain sections if the need arose. Marchesi argues that if this did not happen and the whole Concordat was inserted, then the Constituent Assembly would be giving the Holy See the right not to negotiate on such inconsistencies.

Marchesi goes on:

L’onorevole La Pira . . . osservava in quel discorso che abbiamo ascoltato con vivo interesse, che i Patti esistono, sono una realtà concreta, e bisogna pertanto riconoscerli. Ma, onorevoli colleghi, non tutto quello che esiste si può e si deve riconoscere. La Costituzione deve contenere quelle norme che hanno validità oggi e più ne avranno domani; non quelle che sono già bisognose di cancellatura e di correzione, come voi stessi avete riconosciuto. Noi vogliamo che questi Patti lateranensi non entrino nell’ossatura e non divengano parte del nuovo Stato; vogliamo che essi abbiano vigore come gli altri trattati, con quel senso di speciale osservanza che devono avere per noi italiani. Questa discussione non l’abbiamo voluta noi. Voi l’avete voluta: nessuno di voi poteva immaginare che sarebbe rimasto avvolto nel silenzio il tentativo di inserire quei Patti nella Costituzione repubblicana d’Italia. Con quei Patti, certamente una nuova storia è incominciata nei rapporti fra la Chiesa e lo Stato italiano. Noi vogliamo che quella Storia non si arresti; noi vogliamo che quei Patti siano mantenuti, anzi, siano resi più validi in un’aria più limpida di libertà e di sincerità.⁷⁸⁸

Jacini (Dc) claims there are as many clauses in the Concordat which would jar on a Catholic conscience as there are that would displease a democratic conscience and so revision would not be such a grave problem as some *costituenti* have made out:

non è con uno spirito di intolleranza e di clericalismo che noi chiediamo la conservazione dei Patti del Laterano; la chiediamo da un punto di vista storico, perché riteniamo che solo in questo modo si possa garantire la pace religiosa. Dal testo dell’articolo 5 emerge che noi facciamo riferimento ai Patti lateranensi, soprattutto come ad una fonte della norma giuridica sancita dalla Costituzione. Se le norme in parola facessero singolarmente parte integrante della Costituzione, non basterebbe un accordo bilaterale per modificarle, né tanto meno si potrebbe dire che possono eventualmente modificarsi senza richiedere un procedimento di revisione costituzionale; rimane quindi aperta la porta ad una revisione per via di semplici accordi *bilateralmente concordati, mentre il principio di una separazione amichevole,*

⁷⁸⁷ Ibid., p. 411.

⁷⁸⁸ Ibid., pp. 411-12.

onesta, rispettosa, come è nel desiderio di tutti, è proprio sancita dal primo comma dell'articolo 5.⁷⁸⁹

Condorelli (Bnl) typifies the intransigence of the Catholic Right and their assumption that not accepting the Concordat as it stands equates to denouncing it: “la Costituzione in cui è recepito ci obbliga a considerarlo come una legge costituzionale, e per modificarlo unilateralmente, cioè denunciarlo, dobbiamo raggiungere quelle determinate maggioranze necessarie per il processo di revisione.”⁷⁹⁰ He emphasises the formula put out by the Church in relation to both documents (*‘simul stabant simul cadent’*) and says that many lay jurists agree with it. He also points out that Article 44 of the Concordat allows for joint reinterpretation of the document and that any conflict should not lead to denunciation but renewed negotiations to find such an interpretation.⁷⁹¹ If on the other hand the Assembly sees fit to modify the Concordat unilaterally, he says all they have to do is adjust the wording in draft articles 76 and 83 (which provide for parliamentary authorisation for revision of treaties) to include Concordats and the problem is resolved. Although the problem might well have been overcome in this way, such a move would certainly have antagonised the Church and would potentially have caused a rift in Church/State relations: for the majority of the Assembly, this was something to be avoided at all costs.

Arturo Labriola (Udn) puts on the agenda the following item for discussion:

L'Assemblea, convinta dell'opportunità di modificare o togliere dalle parti in esame del progetto di Costituzione le formali proposte che appaiono superflue o giuridicamente inesatte; convinta altresì che i principî fissati all'articolo 5 del progetto in esame non rispondono allo spirito laico delle istituzioni repubblicane; passa all'ordine del giorno.⁷⁹²

He begins by delineating the component parts of the Pacts.

I Patti Lateranensi consistono: in un Trattato che costituisce lo Stato della Città del Vaticano; in un Concordato riguardante la materia ecclesiastica ed i rapporti fra lo Stato italiano e le autorità ecclesiastiche; in un insieme di accordi finanziari, riguardanti rapporti di dare e avere fra i due poteri (peraltro di dare da parte dello Stato italiano, di avere da parte della Chiesa: come al solito!) Ho distinto fra atto costitutivo dello Stato della Città del

⁷⁸⁹ Ibid., pp. 420-21.

⁷⁹⁰ Ibid., p. 448.

⁷⁹¹ Ibid.

⁷⁹² Ibid., p. 479.

Vaticano (trattato politico) e Concordato, pur non ignorando che il Concordato è un trattato.⁷⁹³

He reduces the problem to its simplest terms: a treaty cannot become part of a constitution because treaties are temporary documents, able to be modified and annulled, while constitutions, in theory at least, contain conditions which have a juridical stability.

Ma, se nella costituzione si considera la sua mutabilità, questa è un'altra ragione, opposta e non meno fondata per non includervi trattati. Il principio *pacta sunt servanda* implica che un trattato non può essere modificato unilateralmente, può solo essere annullato unilateralmente; mentre una Costituzione si può sviluppare e modificare. C'è tuttavia una ragione fondamentale, dipendente dalla natura dei due istituti (Costituzione e trattato), che esclude la trasfusione e il trapiantamento del trattato nella Costituzione. L'indole di una Costituzione è un rapporto fra cittadini e Stato, o fra cittadini e cittadini. L'indole di un trattato è un rapporto fra Stato e Stato. La diversità dei due istituti spiega la loro necessaria separazione pratica . . . Sull'impossibilità d'includere un trattato in una Costituzione, vale la considerazione riguardante l'estinzione dei trattati. La teoria e la pratica ammettono che 'vi sono casi in cui la volontà unilaterale può abolire il trattato.' (*Nuovo Digesto Italiano*). Vi è contraddizione nel fatto che il Progetto di Costituzione prevede la revisione della Costituzione (articoli 130-131), e poi vuole inserire un trattato nella Costituzione. Se *pacta sunt servanda*, come si possono esporre i Patti stessi ad una revisione? La prospettiva di revisione della Costituzione ci richiama al sistema dell'annullamento dei trattati. Essi possono essere annullati per volontà di una delle parti. È un diritto che compete ad ogni Stato 'quando siano mutate le circostanze di fatto che avevano influito sulla conclusione del trattato [*Nuovo Digesto Italiano*]',⁷⁹⁴

He cites a number of examples of states annulling treaties and continues:

Del resto, è pratica ammessa che la guerra produce l'annullamento dei trattati. Ora, se il Vaticano può unilateralmente abolire i Patti Lateranensi (per esempio il Concordato, che per ammissione univoca è un trattato); e se i Patti Lateranensi siano inclusi nella Costituzione, potremmo riconoscere a uno Stato straniero il diritto di modificare la nostra Costituzione?⁷⁹⁵

Dossetti argues that having already applied the concept of *originarietà* to both Church and State, and having established that each institution is, therefore, distinct but equal and thus prohibited from legislating unilaterally on any shared

⁷⁹³ Ibid.

⁷⁹⁴ Ibid., p. 480.

⁷⁹⁵ Ibid.

interest, consequently the principle of bilaterality must also be applied to Church/State relations as delineated by the Lateran Pacts of 1929.⁷⁹⁶

Even though articles in the Concordat impinge on state jurisdiction in the new Republic, their amendment is impossible and unconstitutional without the agreement of the Church. As a result the State would find itself in a subordinate position to the Church in ecclesiastical matters and would be faced with the choice of either acceding to Church demands without the possibility of a veto, or else renouncing all amendment of such material and prohibiting any constitutional regulations being drawn up:

il che praticamente significa uno Stato completamente ligio e sottoposto all'autorità della Chiesa, senza alcuna possibilità di sottrarsi ad essa, cioè uno Stato subordinato alla Chiesa in guisa tale, quale non fu mai nell'epoca del più acceso e fervente confessionalismo.⁷⁹⁷

(iv) Constitutionalisation of the Pacts

Whether the Pacts, once inserted in the Constitution, could be modified or annulled, and, if so, whether individual parties or both parties had the right to do so, was pivotal to the issue of the constitutionalisation of the Pacts. A key point of debate was whether the inclusion of the Pacts in the Constitution meant that they were 'norme puramente di legge' or 'norme costituzionali'. D'Avack believed that Vatican intransigence was at the heart of the problem for the Assembly:

in base all'ultima parte del secondo coma dell'art. 7 (i.e. in the final version), la Chiesa può, in questo caso, rifiutando ogni riesame della questione, e in particolare ogni riesame dei casi di contrasto concretatasi per la nuova situazione, rendere impossibile ogni revisione bilaterale e corazzare quindi le norme lateranensi con quella fittizia rigidità di norme costituzionale, che anche per riconoscimento dei costituenti cattolici esse in realtà non possiedono. Ma ciò sarebbe, oltre tutto, anche un abuso giuridico, perchè nel momento stesso in cui (almeno per bocca dei propri ideali rappresentanti) si afferma il principio che il regolamento dei rapporti tra Stato e Chiesa dev'essere bilaterale e concordatario, e che proprio questo è il più vero significato dell'art. 7, non si può frustrare questo spirito e questa regola di accordo opponendosi a priori a qualunque ipotesi di revisione.⁷⁹⁸

⁷⁹⁶ Ibid., p. 552.

⁷⁹⁷ D'Avack, *I rapporti fra Stato e Chiesa*, pp. 109-10.

⁷⁹⁸ Ibid., p. 322.

Marchesi (Pci) forcefully objects to the constitutionalisation of Article 5 of the Concordat which

deve considerarsi una grossa spina confitta nel cuore della pace religiosa che si è creata, sul cui solco non comprendo perché si sia voluto gettare il germe di una lotta religiosa che i comunisti intendono scongiurare e che, qualunque parte prevalga, non potrà dare buoni frutti.⁷⁹⁹

Perassi (Pri) says he will vote for Togliatti's 'termini concordatari' amendment and believes that this is not the time for any discussion of the Treaty and Concordat. He limits his argument to juridical and constitutional matters. In fact, he makes a personal attack on Moro who, although "sia persona di molta autorità, questo è indubbiamente un problema che supera la sua competenza."⁸⁰⁰ This is quite a put-down for one of the Dc's brightest young politicians. Perassi is against constitutionalising the Lateran Pacts because, he argues, there is no reason to make a special case of them and not do the same for other international treaties. He says it is proper that Togliatti's amendment (not making reference to the Pacts currently in force) by using a more general terminology ("termini concordatari") means not touching the Pacts at all. It is a principle of international law bound by solemn declarations that not even a Constitution can touch existing conventions, as they remain in force until such time as they are modified or revoked, according to the principles by which they are governed. The essential reason for not including an explicit reference to the Pacts is that treating them in this way would set a legal precedent where the juridical regulation and control of them would differ from that of other treaties. He will vote for the amendment as it represents a major concession according to many *costituenti*.⁸⁰¹

Constituent Assembly

Calamandrei talks extensively on the need for clarity in the Constitution and how the Draft does not meet up to such a basic requirement, both from the point of view of homogeneity of language and articles, however well crafted, that do not reflect the economic and social difficulties faced by post-war Italy.⁸⁰² He is particularly concerned that by the end of the draft phase of discussions many Dc politicians are

⁷⁹⁹ CRAC, vol. 6, p. 758.

⁸⁰⁰ Ibid., p. 154.

⁸⁰¹ Ibid.

⁸⁰² CRAC, vol. 1, pp. 154-166.

already talking about the Lateran Pacts as if their insertion in the Constitution is guaranteed, when there is still, in theory, the possibility that the Assembly will reject their inclusion.⁸⁰³

Citing the incongruous situation of a treaty finding its way into a constitution, Benedetto Croce (Pli) speaks plainly against the Pacts:

e come mai a questo trattato in sede di Costituzione si può aggiungere l'irrevocabilità, cioè l'obbligo di non mai denunciarlo o (che vale lo stesso) di modificarlo solo con l'accordo dell'altra parte, mentre l'una delle due, cioè l'altro Stato, non interviene e non può intervenire come contraente in questo *atto interno* e quell'obbligo resta unilaterale, ossia appartiene a uno di quei monologhi che, come argutamente è stato osservato, nel testo presente si alternano coi dialoghi. Parlai io solo in Senato, nel 1929, contro i Patti lateranensi; ma anche allora dichiarai nettamente che non combattevo l'idea delle conciliazioni tra Stato e Chiesa, desiderata e più volte tentata dai nostri uomini di Stato liberali, perché la mia ripugnanza e opposizione si riferiva a quel caso particolare di conciliazione effettuato non con una Italia libera, ma con una Italia serva e per mezzo dell'uomo che l'aveva asservita, e che, fuori di ogni spirito di religione come di pace, compieva quell'atto per trarne nuovo prestigio e rafforzare la sua tirannia . . . Si dirà che la strana inclusione nella Costituzione vuol essere una assicurazione verso l'avvenire; ma quando mai parole come quelle legano l'avvenire? . . . Se quella inclusione, che è uno stridente errore logico e uno scandalo giuridico, è troppo fragile o illusorio riparo verso l'avvenire, perché offende il senso giuridico che è stato sempre così alto in Italia e che solo il fascismo ha osato calpestare?⁸⁰⁴

Meuccio Ruini (Udn), President of the Commission for the Constitution, compares three proposals for the wording of the draft article 5 (Final article 7).

Delle tre formule che sono state discusse: - 1) i rapporti fra Stato e Chiesa sono regolati da patti concordati; 2) dai patti concordati; 3) dai Patti lateranensi – anche la prima (da patti concordati) implica già un riconoscimento tacito dei Patti lateranensi che sono i patti concordati in vigore. Le altre due aggiungono di più. Lasciando stare la parola 'lateranensi', dove stride il ricordo mussoliniano, ambedue, pur non *inserendo veramente quei Patti nella Costituzione (ed è affermazione inesatta)* danno ai patti stessi . . . uno speciale valore costituzionale.⁸⁰⁵

Behind the technical questions lie the ideological differences between the proponents of the lay democracy and the Catholic democracy, according to Ruini. Furthermore, each ideology has its own traditions and definitions: but agreement between them is essential for the development of the Italian Republic:

⁸⁰³ Ibid., p. 160.

⁸⁰⁴ Ibid., p. 338.

⁸⁰⁵ Ibid., p. 349.

Tutti gli oratori dell'estrema sinistra hanno qui dichiarato che non pensano a denunciare i Patti lateranensi: ma a perfezionarli e migliorarli, d'accordo con la Chiesa, al momento opportuno. È chiaro che, se noi ridestiamo il contrasto religioso, non sono solo in pericolo, amico Nenni, le riforme sociali: v'è qualcosa di più in pericolo, lo stesso avvenire del Paese. E allora? È possibile un accordo, una formula che consente alla Santa Sede un riconoscimento dei patti dalla Repubblica, ed allo Stato di non vincolare la propria posizione costituzionale? Lasciate che io mi unisca al voto ed all'appello dell'onorevole Orlando, che è stata ripetuta da Togliatti ed altri; si trovi la formula conciliatrice, che senza ferire il punto fondamentale delle due parti, eviti di riaccendere una guerra religiosa, esiziale per il nostro Paese.⁸⁰⁶

Amerigo Crispo (Udn) analyses the significance of incorporating the Pacts in the Constitution:

Significa questo: immobilizzarli, cristallizzarli . . . non essendo ammessa revisione costituzionale. Né occorre dirlo, perché si tratta di patti bilaterali, ed è evidente che lo Stato, cioè una delle parti, non potrà riesaminarli e modificarli per conto proprio.⁸⁰⁷

Indeed any modification would, he claims, undermine the rigid nature of the Constitution. Furthermore, if the Pacts are inserted into the Constitution, then both documents would become one entity, so that the Pacts could not then be modified anyway. He quotes Pius XII's intransigent remark '*simul stabant, simul cadent*' and controversially states his belief that the discrepancies between the Constitution and the Concordat must necessarily signal the downfall of the Treaty, thus reigniting the Roman Question. To this end, he proposes a substitute first clause for article 5 (draft): "Lo Stato riconosce l'indipendenza della Chiesa cattolica, con la quale continuerà a regolare i suoi rapporti per mezzo di Patti concordatari."⁸⁰⁸ He allows for the possibility of this proposal being thrown out by suggesting an additional phrase to be added to the second clause: after the wording: "i loro rapporti sono regolati dai Patti lateranensi", he suggests the following: "in quanto non siano contrari alla presente Costituzione",⁸⁰⁹ a suggestion to which there are the inevitable '*commenti*'. He closes by sternly criticising the members of the Constituent Assembly and particularly the Commission of 75 for wanting to reunite the Constitution of 1849, which proclaimed the fall of the Church's temporal powers, with the current one, which is effectively reinstating them via the renewed political influence gained by Article 1 of the Treaty forming part of the Constitution. Such a

⁸⁰⁶ Ibid.

⁸⁰⁷ Ibid., p. 368.

⁸⁰⁸ Ibid.

⁸⁰⁹ Ibid.

situation has the effect of “retrocedendo nel tempo, e rinnegando i maggiori valori ideali del nostro Risorgimento. Ed è davvero strano che proprio io debbo ricordare questo ai soci fondatori della Repubblica italiana.”⁸¹⁰

Francesco Saverio Nitti (Udn) is saddened by the inclusion in the Constitution of article 5 (draft) in its current form.

È cosa che non avrei preveduta e che ora non mi spiego. I Patti del Laterano non riguardano in nulla la materia della Costituzione. E, perché si pensa di farne materia di un articolo speciale della Costituzione? Si crede forse di garantirne non solo l'esistenza, ma la durata? La Costituzione che noi prepariamo non è tale che possa con la sua durata garantire patti solenni e di durata indefinita. La verità è dunque che i Patti Lateranensi non danno maggiore garanzia, né maggiore sicurezza di durata, se messi nella Costituzione.⁸¹¹

According to Calamandrei, the second clause of article 5 is problematical. The Dc representatives consider it to have the value of an historical fact which cannot be ignored by the Constitution. Calamandrei admits that he would not be averse to mentioning the Pacts in the Constitution and for this reason he has been in favour of a preamble to the document. But the moment such a reference forms part of an article, and thus becomes legally binding (in other words: 'constitutionalised'), the consequences are very grave. The first consequence is that, the Lateran Pacts, once they form part of the Constitution, are not able to be modified without the consent of another power. He questions whether the mandate they have been given by the people of Italy to form the new Constitution includes renouncing Italian sovereignty which, he says, “è nostro dovere affermare, difendere e tener alta ed intatta nella nostra Costituzione.”⁸¹² The second consequence of constitutionalisation of the Pacts is even worse: the surreptitious introduction of articles and clauses within the Pacts that contradict *bona fide* articles of the Constitution. Calamandrei identifies in general terms some of the contradictions:

Il principio della uguaglianza dei cittadini di fronte alla legge, della libertà di coscienza, della libertà di insegnamento, il principio della attribuzione esclusiva allo Stato della funzione giurisdizionale, tutti questi principî costituzionali sono menomati e smentiti da norme contenute nei Patti lateranensi, le quali vengono tacitamente ricevute nel nostro ordinamento col secondo comma dell'articolo 5.⁸¹³

⁸¹⁰ Ibid.

⁸¹¹ Ibid., p. 485.

⁸¹² Ibid., p. 515.

⁸¹³ Ibid.

He quotes article 1 of the Treaty and puts his question to the many respected jurists in the Christian Democrat Party, men like himself, steeped in the pure and precise logic of their trade:

non vi avvedete delle incongruenze, delle contraddizioni, delle assurdità giuridiche, che si annidano in questo articolo 5? E vi chiedo: dobbiamo o no fare una Costituzione democratica, che abbia alla sua base i diritti di libertà? Tra questi c'è il diritto di uguaglianza di tutti i cittadini, la libertà di religione, la libertà di coscienza.⁸¹⁴

Regarding the Lateran Pacts, at first Mario Rodinò (Uq) does not mention their 'inclusion' in the Constitution, but rather presumptuously refers to them being 'guaranteed' by the Constitution. However, in response to the main arguments against inclusion, he says:

L'inclusione dei Patti nella Costituzione . . . significa solo e unicamente che il nuovo Stato italiano . . . deve, di fronte al popolo, che desidera dare al Trattato la massima stabilità e garantirlo da ogni improvvisa iniziativa di sconsiderati, impegnarsi a mai denunciarlo di propria iniziativa; rimanendo ogni eventuale decisione del genere subordinata alle procedure ed approvazioni richieste per le variazioni delle norme costituzionali.⁸¹⁵

He says inclusion of the Pacts does not and cannot have any juridical repercussions since the Pacts are the

rappresentante legale di una famiglia che assume, nei riguardi dei componenti della famiglia stessa, impegno ufficiale di non denunciare, senza prima consultarli, la continuità di un contratto, che la famiglia, parte contraente, considera utile e gradito per i suoi interessi ed i suoi sentimenti. Perché . . . rifiutarsi di ratificare un accordo intento a garantire uno dei maggiori beni dell'uomo: la tranquillità familiare? Un accordo che può portare e che porterà un essenziale contributo a quella pace e quella tranquillità di cui la grande famiglia italiana ha tanto bisogno.⁸¹⁶

Bassano singles out Jacini as one of a number of Christian Democrats who recognise that there are elements in the Concordat that need amending, and yet at the same time, as a party, they are seeking, by means of this article of the Constitution, to make the Pacts immutable.⁸¹⁷ Cevolotto agrees that insertion of the Pacts under the current wording would crystallise them, making future amendments very difficult. He says that Costantino Mortati (Dc) has vociferously objected to this idea and

⁸¹⁴ Ibid., p. 516.

⁸¹⁵ Ibid., pp. 532-3.

⁸¹⁶ Ibid., p. 533.

⁸¹⁷ Ibid., p. 536.

proceeds to quote extensively from an article written by Mortati for the newspaper *Il Popolo* that morning (21.03.1947). In the article Mortati denies that the wording of the article suggests that the Pacts would be received in every detail into the Constitution: “Quello che invece è assunto nella Costituzione è solo il principio concordatario, non i singoli Patti in cui questo è attuato e svolto.”⁸¹⁸ Cevolotto argues that the third clause of article 5 (“Le modificazioni dei Patti, accettate dalle due parti, non richiedono procedimento di revisione costituzionale”) suggests that any unilateral attempts at modifying the Pacts is not allowed and, from that, one must deduce that the Pacts would indeed form part of the Constitution.

Not only would they form part of the Constitution: according to D’Avack

l’essere venuti oggi a vincolare ora e per l’avvenire lo Stato al rispetto e alla conservazione immutata di tali Accordi addirittura come uno dei fondamenti costituzionali del suo ordinamento sia stato, a mio sommo avviso, anche se opportuno ed utile politicamente, non meno erroneo e di un’estrema gravità giuridicamente.⁸¹⁹

Some *costituenti*, including Mortati, put forward the opinion that the second clause of article 5 was merely a general reference to the nature of Church/State relations, being based as it was on the Concordat’s external (ie. non-constitutional) laws. The fact that these ‘external laws’, once Article 5 had become final Article 7 of the Constitution, would have full constitutional weight was played down. In fact, being included in the Constitution guaranteed the Lateran Pacts “una speciale posizione di natura costituzionale”.⁸²⁰ However, the ferocity with which the Dc politicians in particular defended the inclusion of the Pacts up until the very last moment suggests that they feared the consequences of their not being included. Again D’Avack goes a long way to delegitimising those fears: “anche senza questo espresso e formale richiamo della norma costituzionale, i Patti Lateranensi avrebbero continuato a conservare pieno valore ed inalterata efficacia sia nell’ordine internazionale, sia in quello interno italiano.”⁸²¹

It is very clear from the debates, both in the subcommission and in the Constituent Assembly, that the arguments, once again from the juridical as from the political and religious standpoints, were divided along very clear lines in terms of choice: either for or against inclusion of the Lateran pacts within the Constitution.

⁸¹⁸ Cited in *ibid.*, p. 541.

⁸¹⁹ D’Avack, *I rapporti fra Stato e Chiesa*, pp. 111-2.

⁸²⁰ *Ibid.*, pp.110-11.

⁸²¹ *Ibid.*, p. 107.

It is also difficult to avoid the conclusion that from the purely juridical point of view, their inclusion within the Constitution represented an anomaly. From this point of view, it is not surprising that Catholic arguments frequently seemed to be tactical, rather than technical, in nature, despite the large number of Catholic jurists in the Assembly and particularly in Subcommittee 1.

The *laici* were able to demonstrate a certain straightforwardness and assurance in their arguments, but frequently showed irritation, and sometimes hostility and suspicion of their opponents motives. This was understandable, given that not even the combative Nenni raised any objections to a concordatory settlement which left the Church all its rights and privileges except where there were clear infringements of citizens rights and of those of other beliefs.

Paradoxically, it was the Catholic Bruni who in many ways demonstrated the victory of the argument against inclusion of the Pacts. The leader of a party based explicitly on Catholic social principles (the *Partito sociale cristiano*), he gave one of the clearest, if not the clearest, and detailed expositions of objections to inclusion of the Pacts, and to some of their provisions. The clarity of exposition was accompanied, moreover, by his evident lack of hostility to his Catholic colleagues, by a firm grasp of democratic principles, and perhaps most revealing of all, by repeated appeals to Catholics to be honest in their arguments. Perhaps the greatest irony is that if in one sense Bruni was a demonstration of the victory of the *laici* in the argument, it would be the decision of the Communist leader Togliatti, in the end, to support inclusion that would ensure their defeat in the vote.

B3 Draft article 5, clauses 4 and 5

Le altre confessioni religiose hanno diritto di organizzarsi secondo i propri statuti, in quanto non contrastino con l'ordinamento giuridico italiano. I rapporti con lo Stato sono regolati per legge, sulla base di intese, ove siano richieste, con le rispettive rappresentanze.

(i) Religious freedom as a liberty

According to Gianni Long, the origins of twentieth century ideas on religious freedom in Italy can be found in the study of ecclesiastical law. Prior to the 1920's, the parameters and definitions of ecclesiastical and canon law were extremely blurred, with most of the study being conducted in the Catholic universities. During the twenties and thirties, Francesco Scaduto and Francesco Ruffini, helped differentiate the two disciplines, introducing their courses on ecclesiastical law to State universities. Although their general aims were similar, their opinions did not always converge and on one subject in particular – the equal legal status of religious confessions – they differed substantially:

Per Ruffini essa doveva consistere in un'eguaglianza di condizioni pratiche, che tenesse conto della diversa consistenza numerica delle confessioni, poiché diverso è il rapporto giuridico che vi è con una confessione di poche migliaia di fedeli e quello con una molto più numerosa. Per Scaduto il problema è diverso: il rapporto di ciascuna confessione con lo Stato ha la stessa natura giuridica . . . ; e voler instaurare rapporti diversi con soggetti giuridicamente uguali, sulla base di un dato estrinseco come quello della consistenza numerica, significa confondere il fatto con il diritto. La risposta di Ruffini è che lo Scaduto confonde 'libertà religiosa e posizione giuridica delle associazioni religiose', mentre i concetti sono distinti: la libertà dev'essere eguale per tutti, la posizione delle associazioni religiose può essere diversa.⁸²²

The signing of the Lateran Pacts gave credence to Ruffini's viewpoint and it was his work which was quoted most frequently in the debates of the Constituent Assembly on the subject.

In the summer of 1945 the *Ministero per la Costituente* set up the *Commissione per la riorganizzazione dello Stato* made up of magistrates, civil servants and politicians. Its duties were very limited and of little actual significance in terms of giving direction to the Constitution. What is interesting about it is the

⁸²² Extracts from *Libertà e uguaglianza delle confessioni religiose: la polemica Scaduto-Ruffini*, in 'Stato e confessioni religiose', Vol. II, a cura di Francesco Margiotta-Broglio, Firenze, La Nuova Italia, 1976-1978, p.25ff., cited in Long, *Alle origini del pluralismo confessionale*, p. 307.

scarce importance it placed on religious liberty. This can be seen from the rather casual way with which it dealt with the question in its subcommission dealing with constitutional problems (one of five in all). The subject was included briefly in the conclusion of the discussion on the protection of the minorities, and even then it was only the political aspect of the problem that was highlighted:

In relazione, poi, alla tutela di attribuire alle minoranze religiose è da osservare che tale problema non pare possa assumere uno specifico rilievo nella determinazione dei principi relativi alle minoranze, in quanto la garanzia religiosa dovrebbe, per ogni cittadino, essere affermata in una *disposizione di carattere generale che stabilisca per tutti, tra le altre libertà, anche quella di religione*. Sotto questo aspetto, peraltro, il problema involge la valutazione di delicati elementi di ordine politico, alla quale è condizionata (in connessione anche col regime concordatario tuttora vigente) una *affermazione costituzionale al riguardo e che, a tale effetto, dovrebbero essere in linea preliminare precisati*.⁸²³

The subject was again raised later by the Liberal university professor Guido Astuti in an address to the first Subcommission on 11th March 1946 dedicated to *I diritti di libertà*. Astuti makes a distinction between *libertà di coscienza* and *libertà di culto*:

Libertà di culto e di opinione. Diritto di credere e professare fede religiosa e convinzioni politiche, sociali, filosofiche. Libertà di proselitismo e di propaganda-discussione. Divieto di privazione di questo diritto, per rapporto di impiego e lavoro. Divieto di obbligo a manifestare le proprie convinzioni politiche e la propria fede religiosa. Divieto di obbligo a partecipare a pratiche cerimonie di culto o ad usare formule religiose di giuramento. *Libertà di culto e di appartenenza a chiese o confessioni*. Diritto di libero esercizio di culto pubblico. Diritto di partecipazione ad organizzazioni di carattere religioso. Garanzia all'assistenza religiosa, a chi la richieda, nell'esercito, nelle case di pena, negli ospedali ed istituti pubblici di beneficenza ed assistenza.⁸²⁴

However, Gaetano Azzariti (*presidente di sezione della Corte di cassazione* and *capo ufficio legislativo del Ministero di Grazia e Giustizia*) was insistent that parity between the religions was out of the question,

essendo l'organizzazione cattolica completa e non altrettanto quella degli altri culti. Se lo Stato interviene in senso positivo, può assicurare l'assistenza ai cattolici e non agli appartenenti agli altri culti. Così accade per i cappellani militari, così per gli ospedali e così per la stessa scuola, ove è agevole impartire una istruzione religiosa cattolica e non occuparsi di altre

⁸²³ G. D'Alessio, (Ed.), *Alle origini della Costituzione italiana – I lavori preparatori della 'Commissione per studi attinenti alla riorganizzazione dello Stato' (1945-1946)*, Bologna, Il Mulino, 1979, p. 212.

⁸²⁴ Ibid., p. 262.

confessioni. Per le minoranze religiose può bastare il principio della libertà di coscienza. In fondo la parità assoluta finirebbe per risolversi in ateismo, come è avvenuta in Francia, ove sono state cacciate tutte le monache dagli ospedali. L'esistenza del Concordato, d'altra parte, è un insopprimibile dato di fatto e non è possibile considerarlo decaduto.⁸²⁵

The Commission failed to come to any agreement on the relationship between religious freedom and the Lateran Pacts and had to admit as much to the Constituent Assembly, to which body the resolution of the problem was subsequently entrusted. Long highlights some elements of interest from these pre-constitutional discussions: the lack of basic preparatory work on religious freedom undertaken by everyone involved; the 'extremely narrow conception of liberty' of the judiciary and government advisors (the 'tecnici') who were more concerned with the problems a reassessment of religious freedom in the new Constitution would cause in rearranging and rebuilding the administrative structures of State and the 'unpleasant phenomenon' of a variety of small religious groups proselytising freely across the country in direct contrast to the terms of the Concordat. The Concordat, they felt, should remain central to any discussion on the great principles of liberty and in case of conflict, should prevail.⁸²⁶ As we have seen, this view was challenged during the debates by, among others, Nenni and Calamandrei, but they failed to secure enough support to prevent it being a major influence in the final voting on religious freedom. As D'Avack points out,

i fondamentali principi della libertà di coscienza e di culto, dell'uguaglianza di tutti i cittadini di fronte alla legge, della libertà di associazione e di riunione, ecc. pur sanciti in modo tanto solenne e assoluto nella nostra Carta costituzionale, incontrano sempre il limite della non contrarietà alle singole clausole dei Patti lateranensi e solo nell'ambito e nei confini da queste consentiti possono assumere e conservare valore ed efficacia concreta nell'ordinamento italiano.⁸²⁷

However, the 19th century liberal tradition had left its mark: already in the Commission set up by the Ministry for the Constituent Assembly, Mortati maintained that a modern constitution could not avoid making a clear statement on religious freedom. As Long points out:

È un principio tanto ovvio che l'attuale articolo 19 [draft article 14] è passato praticamente senza discussione attraverso le varie fasi dei lavori della

⁸²⁵ Ibid., p. 284.

⁸²⁶ Long, *Alle origini del pluralismo confessionale*, p. 324.

⁸²⁷ D'Avack, *I rapporti fra Stato e Chiesa*, p. 115.

Costituente. Ma i principi di questa portata non restano senza conseguenze. E attraverso l'articolo 19 è stata 'riabilitata' anche quella che sembrava la più illustre vittima della scelta di privilegiare i culti organizzati: il pensiero ateo, o areligioso. Nonostante il tentativo di Labriola in Assemblea . . . esso non è oggetto di una tutela costituzionale specifica. E per molto tempo si è ritenuto, in dottrina e in giurisprudenza, che rientrasse solo nella generale tutela della manifestazione del pensiero (art. 21).⁸²⁸

From the time when the Ministry for the Constituent Assembly set up its Commission to look into the issue of Church/State relations, the latter received suggested constitutions or even single articles from various minority religious organisations across Italy. This process continued throughout the period of the Subcommittee's work and that of the Constituent Assembly. One such suggested constitution came from the 'Comitato Nazionale per le Onoranze a Giuseppe Mazzini nel LXXIV Anniversario della Morte'. Freedom of religion was addressed by article number 45 out of a total of 55: "È garantita e tutelata la libertà di coscienza e di culto. Dalla credenza religiosa non dipende l'esercizio dei diritti politici e civili."⁸²⁹

Subcommission 1

In the preliminary meetings of Subcommittee 1, Lelio Basso's *Relazione sulle libertà civili* regarding freedom of religion (*relazione* article 7) was worded thus:

Ognuno è libero di professare la propria fede religiosa . . . e può porre in essere ogni atto idoneo a diffondere le proprie credenze e opinioni, purché non leda i diritti altrui. Nessuna differenza può farsi tra gli individui in base alla religione e alle opinioni politiche, sociali, filosofiche e scientifiche. Nessun limite può porsi alla libertà di coscienza. L'esercizio di ogni culto è libero. Nessun limite può porsi alla libertà di coscienza, che dev'essere in ogni tempo e luogo azionabile, verso qualunque autorità. Sembra opportuno disciplinare in questa sede la libertà di religione e di culto, anziché rinviarla alla norma relativa ai rapporti tra Stato e Chiesa, se dovrà esservi. Non appare invece necessario scendere a specificazioni delle varie estrinsecazioni della libertà di coscienza, di religione e di culto, come fanno alcune costituzioni, in ordine, per esempio, al giuramento, ai rapporti di lavoro, al servizio militare, ecc., poiché queste specificazioni per un lato non sono complete, onde danno luogo a difficoltà interpretative per i casi non enunciati; per un altro sono

⁸²⁸ Long, *Alle origini del pluralismo confessionale*, p. 362. See also: P.A. D'Avack, *La libertà religiosa nella normativa della Costituzione repubblicana italiana*, in *Studi per il XX anniversario dell'Assemblea costituente*, vol. II, Firenze, Vallecchi, 1969, pp. 176ff.

⁸²⁹ ACD, Busta 73, fascicolo 15, *Comitato Nazionale per le Onoranze a Giuseppe Mazzini nel LXXIV Anniversario della Morte*, p. 7.

superflue, in quanto conseguenze immediate e dirette del principio enunciato.⁸³⁰

Giorgio La Pira's first article of his *relazione* on *Principii relativi ai rapporti civili* is typically spiritual and direct:

Nello Stato italiano che riconosce la natura spirituale, libera, sociale dell'uomo, scopo della Costituzione è la tutela dei diritti originari ed imprescrittibili della persona umana e delle comunità naturali nelle quali essa organicamente e progressivamente si integra e si perfeziona.⁸³¹

His article 6-*bis* on 'liberty' states:

La libertà è inalienabile. Nessun gruppo, perciò, può imporre ai propri membri obbligazioni che siano incompatibili col libero esercizio dei diritti conferiti ai cittadini dalla Costituzione e dalle leggi.⁸³²

His article 17 deals more specifically with religious liberty:

Ognuno ha diritto alla libera professione, pratica e propaganda della propria fede religiosa. Lo Stato assicura a tutti le condizioni adeguate per il libero esercizio di tale diritto. La professione di una determinata fede religiosa o di una determinata convinzione sociale, politica o filosofica non reca pregiudizi giuridici.⁸³³

Mario Cevolotto (Pdl) has to open with an apology:

Non ho potuto avere in tempo i contatti col collega Dossetti che mi ero proposto di sviluppare, per cercare una linea comune d'intesa nella formulazione del primo schema ed abbozzo di quelle che dovranno essere le formulazioni della Carta costituzionale sui principii generali dello Stato e sui rapporti con le Chiese. Sono costretto quindi a presentare una mia relazione e una mia proposta, che la Sottocommissione esaminerà e svilupperà in confronto con quelle che l'onorevole Dossetti vorrà prospettare per suo conto.⁸³⁴

⁸³⁰ ACD, Busta 74, Fascicolo 1, *Commissione per la Costituzione: 1° Sottocommissione. Relazione del Deputato Lelio Basso sulle 'Libertà civili'*, pp.17-18. This folder contains the *relazioni* of the individual members of the Subcommissions appointed to examine single issues relating to Church/State relations and the minority religious groups. There are no dates marked on the printed documents: the only indication appears in the accompanying catalogue ("Inventario dell'Assemblea Costituente") which says that this folder contains *relazioni* presented to the Subcommissions between 27.08.1946 – 13.02.1947; that is, broadly speaking, during the period of the work of the Subcommissions.

⁸³¹ ACD, Busta 74, Fascicolo 1, *Commissione per la Costituzione: 1° Sottocommissione. Relazione del Deputato Giorgio La Pira sui 'Principii relativi ai Rapporti civili'*, p.27.

⁸³² Ibid., p. 28.

⁸³³ Ibid., p. 29.

⁸³⁴ ACD, Busta 74, Fascicolo 1, *Commissione per la Costituzione: 1° Sottocommissione. Relazione del Deputato Mario Cevolotto sui 'Rapporti fra Stato e Chiesa (Libertà religiosa)'*, p.37. In fact, Dossetti's *relazione* does not appear in this collection of the individual proposals of Subcommission 1. Why this was is not clear: but very little could have been more important than producing and

Regarding freedom in general and particularly of minorities, Cevolotto takes inspiration from the Turkish Constitution:

Può essere suadente . . . dare una definizione della libertà, che ha indubbiamente un alto valore etico e quasi religioso: 'La libertà consiste nella facoltà di fare tutto ciò che non nuoccia agli altri; la libertà di ognuno, che è un diritto naturale, ha per limiti quelli della libertà degli altri.' Ne deriva la prova che anche lo Stato aconfessionale ha una sua salda base etica in quei sommi principii morali che costituiscono in sostanza il fondamento comune di tutte le religioni e non di quelle cristiane soltanto. Ma più di un'affermazione filosofica, nella Costituzione è importante fissare in concreto quali libertà sono garantite alle minoranze anche minime, perché nel riconoscimento e quindi nella tutela dei diritti di libertà delle minoranze è il paragone della reale concretizzazione dei principii democratici nella Carta.⁸³⁵

Cevolotto says, in the case of Church/State relations in particular, any proposals must take into account two basic principles:

Il primo principio è un corollario del diritto di uguaglianza, ed è che la confessione religiosa, o il fatto di non professare alcuna fede religiosa, non possono essere causa di privilegio, di differenziazione o di inferiorità legale per nessun cittadino. L'altro principio è quello della libertà di coscienza. Se nel campo delle libertà individuali, quando esse siano riconosciute – come lo è, ormai universalmente la libertà di coscienza – il diritto del singolo è uguale al diritto di tutti gli altri, e il diritto delle minoranze anche minime ha lo stesso valore e la stessa protezione del diritto delle grandi maggioranze, è evidente che lo Stato non può non considerare i diritti di tutti i culti e di tutte le fedi, qualunque essi siano (purché leciti) risultino professati anche da pochissimi cittadini, sotto la specie della più assoluta uguaglianza nei riguardi dei principî costituzionali, salvo quelle necessarie differenziazioni nella concreta legislazione amministrativa che derivano dalla diversa importanza e dalla diversa diffusione delle varie chiese.⁸³⁶

But even this legislation, varied and necessarily complex, "non potrebbe senza cadere nel vizio di incostituzionalità, costituire posizioni di privilegio o ragione di persecuzione per nessuna confessione religiosa."⁸³⁷ Cevolotto's proposed articles come under two headings: the State and Religious Freedoms. Article 3 under 'Lo Stato' reads:

presenting a proposal for Church/State relations. His contribution begins in the debates of the Subcommission proper. If this was a deliberate attempt to steamroller his proposals through at this stage, then there should have been procedural devices in place to prevent this happening.

⁸³⁵ Ibid., p. 38.

⁸³⁶ Ibid., p. 39.

⁸³⁷ Ibid.

Tutti i cittadini sono uguali davanti alla legge ed hanno gli stessi diritti e doveri. La nascita, il sesso, la razza, la condizione sociale, le credenze religiose, o il fatto di non aver alcuna credenza, non possono costituire la base di privilegio o d'inferiorità legale.⁸³⁸

Cevolotto submits four proposals for articles under 'Le libertà religiose':

1. A tutti i cittadini è garantita piena libertà di fede e di coscienza.
2. È garantita piena libertà di esercizio e di propaganda a tutti i culti e confessioni, che non siano contrari all'ordine pubblico, alla morale o al buon costume. È tutelato il diritto di tutti i cittadini di professare qualsiasi culto o di non professare alcun culto o anche di abbandonare una confessione religiosa per entrare in un'altra.
3. Tutte le organizzazioni confessionali possono propagandare e diffondere liberamente la loro fede e possedere gli edifici nei quali il culto viene esercitato.
4. Nessuno può giustificare un reato, o il mancato adempimento di un dovere imposto dalla legge, invocando le proprie opinioni religiose o filosofiche.⁸³⁹

As we can see, at this stage in proceedings, there appears to have been a great deal of common purpose in the principles that the various political parties were expounding. The first signs of the problems to come emanated from Dossetti's interpolation of an ecclesio-juridical objection to a point accepted at this stage. In the debates of Subcommission 1, Dossetti argues that the internal structure of other churches is in general less well defined than in the Catholic Church, and so the phrase "lo Stato riconosce" the rules governing other churches presupposes a well-defined internal structure and is thus not suitable. He thinks it needs a more precise formulation.⁸⁴⁰

The next day, the proposed clause is presented:

Le altre confessioni religiose hanno il diritto di organizzarsi secondo propri statuti, in quanto non contrastino con l'ordinamento giuridico italiano. I loro rapporti con lo Stato sono regolati per legge sulla base di intesa, ove lo richieggano, con le loro rappresentanze.⁸⁴¹

Dossetti's thrust can be clearly seen in the changes from "Chiese" to "confessioni" indicating a subordination of the other churches to the Catholic Church; and "in quanto non contengano disposizioni contrarie alla legge" to "in quanto non contrastino con l'ordinamento giuridico italiano". The "ordinamento giuridico italiano" refers much more clearly to the whole Italian legal system, which in matters of Church/State relations is governed by the Lateran Pacts. The following proposals

⁸³⁸ Ibid., p. 41.

⁸³⁹ Ibid., p. 42.

⁸⁴⁰ CRAC, vol. 6, pp. 158-9.

⁸⁴¹ Ibid., pp. 166-7.

on individual freedoms (which became draft article 14) are also put forward by Dossetti and Cevolotto:

Dossetti: Ogni uomo ha diritto alla libera professione delle proprie idee e convinzioni, purché non contrastino con le supreme norme morali, con la libertà e i diritti garantiti dalla presente Costituzione, con i principi dell'ordine pubblico.

Cevolotto: Tutti i cittadini hanno il diritto alla piena libertà di fede e di coscienza.⁸⁴²

Cevolotto wants equal rights for all religions and, while recognising that the administrative regulations for the Catholic Church will differ from other religions, juridical equality must be maintained. He fears that old discrepancies in the penal code between acts against Catholicism and those against other religions, and in particular Protestantism, will re-occur.⁸⁴³

Concetto Marchesi (Pci) points out that Dossetti, being a fervent Catholic, when he talks about 'supreme norme morali', can only be referring to Catholic morals. As part of his defense of his proposal, Dossetti quotes Jemolo's 'Per la pace religiosa d'Italia', saying that Italy's new juridical system should begin with a declaration of adhesion to the ethical principles of Christianity that represent the basis of its conscience and civilisation.⁸⁴⁴

Lelio Basso (Psi) expands on Marchesi's argument: the Pope is the head of the Catholic Church and infallible source of morals; therefore all religious thinking, whatever one's faith – according to Dossetti's view – would have to be guided by the Pope. Aldo Moro, rather than steering away from this argument, chooses to compound it from a Catholic perspective: since Italy is predominantly a Catholic country, it is only natural that Catholic moral values should inform the morality of the nation.⁸⁴⁵

Constituent Assembly

In the Constituent Assembly debates, Ugo Damiani (Misto) couples his objection to inclusion of the Lateran Pacts with his defence of freedom of conscience and religion,

⁸⁴² Ibid., p. 787.

⁸⁴³ Ibid., p. 718.

⁸⁴⁴ Ibid., p. 788.

⁸⁴⁵ Ibid., pp. 791-2.

perché questi rappresentano un accordo fra lo Stato italiano e lo Stato del Vaticano, ed in ogni Costituzione mi pare che non siano stati mai inseriti accordi internazionali. Lo Stato italiano e lo Stato del Vaticano sono due Stati, che si accorderanno, ma in un rapporto che deve essere esterno alla Costituzione, che non deve influire sulla stessa . . . Quindi, libertà di religione, sostengo; quindi rivediamo il problema, in modo che la libertà di religione possa finalmente affermarsi . . . Questa libertà fa parte delle grandi libertà di quelle quattro libertà basilari della Carta atlantica . . . libertà di religione, libertà di parola, libertà dal timore, libertà dal bisogno . . . e articolo 5 deve conformarsi alla libertà di religione.⁸⁴⁶

Dossetti claims that the ethos of bilaterality, that was so essential an element of clause 3 for the Dc, is also good for the minority religions. However, the nature of their relationship with the State is less secure in that they have no ‘originary’ status like the Catholic Church

con cui lo Stato . . . può e deve entrare in contatto attraverso un atto di diritto esterno fra ordinamenti giuridici primari (concordato); mentre le altre Chiese non sono ordinamenti primari o non sono affatto, o non vogliono essere, ordinamenti giuridici, e quindi lo Stato con esse non può entrare in contatto se non attraverso ‘intese interne’, come presupposto di atti legislativi interni dello Stato stesso.⁸⁴⁷

On behalf of the Republican party, Ugo Della Seta calls for freedom of conscience to be sanctioned in the Constitution as the first and most fundamental of all public freedoms arguing that it is much broader in scope than simple religious freedom as it also encompasses those who choose to worship individually or not at all.⁸⁴⁸

(ii) Equal rights for all religions

As we shall see, a reading of the more detailed debates on equal rights for all religions gives a very strong impression that section 3 of the ICAS proposals was the starting point for the Catholics. The two fundamental points in this section of the proposals are that

La Carta Costituzionale deve riconoscere e garantire per tutti i cittadini italiani, di qualsiasi fede od opinione, il principio della libertà di coscienza e di culto, come un diritto naturale indispensabile alla persona umana per l’adempimento dei suoi doveri verso Dio.

⁸⁴⁶ CRAC, vol. 1, p280.

⁸⁴⁷ Ibid., p. 552.

⁸⁴⁸ Ibid., p. 617.

But on the other hand this was qualified by the statements that “il principio costituzionale della libertà di coscienza e di culto non deve importare una equiparazione nelle determinazioni giuridiche” and that

una tale equiparazione nell’ordinamento italiano sarebbe un non senso perché – se pur si voglia prescindere da ciò che per sé è dovuto alla Chiesa, ai suoi istituti, alle sue attività, nelle varie forme di attuazione del divino comando – il principio di giustizia non importa uguaglianza di regolamento per fenomeni socialmente disuguali.⁸⁴⁹

Let us examine how these arguments were developed. De Gasperi recognised that the strong position of the Catholic Church in Italy was unique, with the presence of the Holy See in its capital, and that such a position was not enjoyed in other countries. In an essay on the *Centro tedesco*, published in *Vita e Pensiero* De Gasperi points out the difference in attitude towards multi-faith pluralism in Germany. According to Giovagnoli,

l’attenzione di De Gasperi era fortemente attratta da quella situazione ove i cattolici, in condizione di minoranza, difficilmente potevano pensare di piegare uno Stato totalitario a una logica confessionale, mentre erano portati ad apprezzare uno Stato tollerante e rispettoso verso di loro. Il Centro, scriveva De Gasperi, non aveva mai cercato nulla di diverso che la ‘parità’, ‘la libertà religiosa nel quadro delle libertà civili’.⁸⁵⁰

It is interesting to note that De Gasperi is aware of the need for a state like Germany to show tolerance and respect to Catholics when they are in the minority, but then calls for Italy to be governed as a diarchy between the State and the Catholic Church.

Stefano Riccio (Dc) is quite happy to see other religious groups given equal status with the Catholic Church as long as the Pacts are inserted in the Constitution, but adds that this should be done when justified by the “realtà sociale.”

Il richiamo espresso, quindi, ai Patti lateranensi, come il riconoscimento specifico della sovranità della Chiesa, rispondono a profonde esigenze di natura storica e giuridica. Né questo richiamo contrasta, in linea di diritto o in linea di fatto, con il riconoscimento della libertà e della parità di culti, in quanto, come abbiamo più volte rilevato, essi potranno ben ricevere lo stesso regolamento concordato. Noi diciamo: elevate gli altri culti allo stesso trattamento della Chiesa cattolica, se volete, e quando ne sorgerà la

⁸⁴⁹ See Appendix III.

⁸⁵⁰ Giovagnoli, *La cultura democristiani*, p. 51. Compare this assessment of De Gasperi’s political ideals with the speech made by the Dc leader himself in the Assembly, just prior to the final vote on article 7, in which there was a considerable hardening of attitude towards the rights of minority religious groups. (CRAC, vol. 1, pp. 629-34).

opportunità politica in conseguenza della realtà sociale. Ma non abbassate oggi allo stesso piano degli altri culti la Chiesa cattolica, unicamente e solamente in vista della opportunità politica e della realtà sociale, che noi uomini politici non possiamo in nessun momento trascurare.⁸⁵¹

Once again, the principle of equality of rights is clearly subordinated to the question of number, very much in line with the *conclusioni cattoliche* provided by ICAS.

Arturo Labriola (Udn) points out a contradiction between articles 5 and 7 of the draft proposal:

Grazie all'articolo 5 . . . la nostra è una Repubblica di cattolici; per l'articolo 7 siamo una Repubblica di cattolici e non cattolici . . . Per l'articolo 7 i non cattolici sono cittadini di pieno diritto; per l'articolo 5 non lo sono. È vano sofisticare: se la nostra è una Repubblica cattolica, i non cattolici sono messi in una condizione d'inferiorità. Si dice: sono pochi. Fossero pochissimi o uno solo, l'offesa c'è . . . Ci sono i protestanti, gli 'evangelici' dicono loro. Ci sono gli ebrei. Ci sono i liberi pensatori. Cotesti comunisti, cotesti socialisti sono o non sono marxisti? Lo proclamarono a tutti i momenti. Supponiamo che siano. Ma allora non appartengono a nessuno dei culti ufficiali. Possono essere anche credenti: deisti, teisti, idealisti, che so io? Cattolici non sono. Ci sono i cristiani-sociali? La Chiesa li riconosce? E chi lo sa? Se noi siamo una Repubblica democratica, dobbiamo riconoscere il diritto di tutti i cittadini, anche dei non cattolici a vivere, senza morale diminuzione, nella comune Repubblica. E l'inclusione dei Patti Lateranensi nella Costituzione della Repubblica – di una Repubblica democratica, dico! – è una potente offesa a protestanti, israeliti e soprattutto ai liberi pensatori.⁸⁵²

Carlo Ruggiero (Psli) insists that the most important aspect of religious freedom that needs to be enshrined in the Constitution is the principle that all minority religions should be free and equal:

La questione, onorevoli colleghi, è stata trattata nel progetto di Costituzione in vari articoli: l'articolo 5, l'articolo 7, l'articolo 14. Ma appunto perché è stata trattata in tanti articoli e non ha avuta una norma precisa, il principio che io modestamente vorrei venisse affermato nella Carta costituzionale appare confuso, ambiguo, incerto e pieno di ambagi. Sono costretto, a malincuore, ma per una ragione di insopprimibile franchezza, a dichiarare che la ragione di questa confusione, di questa ambiguità, di questa incertezza e anche di questa reticenza, è stata determinata e voluta dagli onorevoli rappresentanti della Democrazia cristiana in seno alla Commissione. Andiamo piano, perché se cominciamo con le interruzioni adesso, alla fine l'Assemblea diventerà un inferno! La questione . . . fu posta in sede di Commissione e fu proprio onorevole Cevolotto il quale volle che venisse inserita nel progetto di Costituzione una norma che tutelasse allo stesso modo la confessione cattolica e le altre confessioni. L'onorevole Dossetti rispose in questa maniera: 'Come cattolici . . . noi ci riserviamo un giudizio di valore in ordine

⁸⁵¹ CRAC, vol. 1, p. 390.

⁸⁵² Ibid., pp. 483-4.

alla religione; come riconoscimento costituzionale non abbiamo alcuna riserva in ordine al pluralismo delle varie religioni. Ritengo quindi che tutti i fautori della libertà di coscienza e di culto dovrebbero sentirsi tranquillizzati da questa dichiarazione.’ Senonché, questa rimase solo una dichiarazione, di carattere tutto metafisico e astratto, perché non riuscì poi a trovare applicazione concreta e pratica nel progetto di Costituzione.⁸⁵³

Regarding article 404 of the Italian penal code which states that anyone committing an offense against a religion is sentenced on a sliding scale depending on the religion the crime is committed against, Ruggiero quotes Moro as saying to the Assembly:

‘Se . . . si tratta di una confessione professata dalla maggioranza degli italiani, il danno evidentemente è maggiore’. Questa è la dichiarazione, la quale dà luogo ad una confusione che non può essere negata e che, comunque, afferma che il principio dell’eguaglianza delle confessioni viene, rispetto alla legge, nettamente negato.⁸⁵⁴

Ruggiero warns the Assembly against getting caught up in debates on whether crimes against one religion are more serious than crimes committed against another: “dobbiamo prendere invece l’altro principio, che è un principio superiore, umano, cristiano: il principio dell’uguaglianza di tutti di fronte alla legge.”⁸⁵⁵ He says they must constantly refer any decisions they make regarding the Constitution to the concept of liberty:

E . . . non può essere fatta (come spesso è accaduta in quest’Aula, nelle discussioni e sui giornali) la questione che le altre confessioni rappresentano una minoranza. È questo un argomento che, secondo la mia molto modesta opinione, si ritorce contro di voi, colleghi della Democrazia cristiana. La democrazia deve infatti tener conto delle minoranze. Io penso, anzi, che la maturità di una democrazia debba valutarsi proprio dal grado di libertà concesso alle minoranze.⁸⁵⁶

Ruggiero says that this is a principle to which the Constituent Assembly must hold fast during its deliberations, and so Moro’s theory cannot be accepted. Neither can they take into consideration an argument put forward earlier by Umberto Merlin, “che la proposta di eguaglianza di trattamento di tutte le confessioni costituirebbe un’ingiuria al Capo della religione professata dalla maggioranza degli italiani.”⁸⁵⁷

⁸⁵³ Ibid., p. 504.

⁸⁵⁴ Ibid., p. 505.

⁸⁵⁵ Ibid.

⁸⁵⁶ Ibid. This theory is attributed to Lord Acton, the 19th century English liberal parliamentarian, himself a Catholic.

⁸⁵⁷ Ibid.

Ruggiero says he will refrain from commenting on this statement for fear of insulting the Pope, but states plainly that he does not believe this to be an argument that can be given any credence in this or any other seat of government. However, such preconceptions and ideas have resulted in the creation of what he calls “quel piccolo mostro . . . con tutte le sue incertezze e ambiguità.”⁸⁵⁸

Ruggiero examines the third clause of article 5 (which became part of article 8 in the Constitution.) Of this he says:

la questione delle confessioni religiose è stata trattata in tante Costituzioni; tutte le Costituzioni si sono espresse a questo proposito con una frase lineare, semplice, diritta: ‘Tutte le confessioni religiose sono uguali di fronte alla legge.’ Quindi si prova un certo senso di diffidenza quando ci si trova di fronte ad una norma espressa in una forma così confusa, ambigua e incerta.⁸⁵⁹

Ruggiero expresses concern over the wording of the clause, especially the phrase “hanno diritto di organizzarsi” which, he claims, does not address the rights of the minority churches as they are currently constituted, but given that this right is granted in so far as their statutes don’t conflict with “l’ordinamento giuridico”, and that their relations with this “sono regolati per legge” on the basis of agreements to be sought, the right can only refer to the possibility of addressing those rights at some indeterminate time in the future.

Noi diciamo, queste confessioni religiose diverse dalla cattolica, esistono, hanno una storia, hanno una tradizione; sono un fatto. Ed allora perché non debbono essere regolate per la tutela dei loro diritti in questa sede, dove viene regolato il rapporto fra Chiesa e Stato? Quindi, vedete che l’ambiguità è palese ed evidente. Perché prendere in considerazione l’organizzazione e non l’ente, perché l’attività e non il fatto?⁸⁶⁰

Ruggiero then mentions a previous speech by Togliatti who referred to the word ‘tutte’, and couldn’t see why each individual religion could not be named. To Togliatti the matter was “una piccola sfumatura”, but to Ruggiero it is very important: since the article does not refer to particular religious institutions, he claims it is ambiguous. He says they could push for a compact form for the article along the lines of “tutte le confessioni religiose sono uguali di fronte alla legge”, but he only wants to highlight the need for a precise, pertinent and categorical norm “la quale esprime in maniera inconfutabile che esiste un diritto, da parte di tutte le

⁸⁵⁸ Ibid. He is referring to draft article 5.

⁸⁵⁹ Ibid., p. 506.

⁸⁶⁰ Ibid.

confessioni religiose, ad esercitare il diritto della propria fede.”⁸⁶¹ He argues that the present wording smacks of compromise, and they should not allow a compromise on such an important issue.

Dovremmo essere tutti d'accordo nello stabilire questo: che la Chiesa indipendente e sovrana nel suo ordine interno, non deve interferire su quella che è la coscienza dei singoli; così come non deve interferire né comprimere quella che è la necessaria libertà concessa alle altre confessioni, di esercitare il loro culto. Invece, egregi colleghi, questo purtroppo non si verifica. Infatti, dobbiamo constatare (è questa una constatazione obbiettiva) che la Chiesa frequentemente, assiduamente, forse quotidianamente, è portata alla compressione del sentimento della libertà. E molte volte – come posso dimostrarvi – è portata a comprimere il sentimento della libertà nei confronti dei lavoratori. Badate che io non voglio assumere il termine ‘lavoratore’ nella sua accezione politica e marxista, voglio assumerlo in senso più universale di lavoratori intesi come creature umane. E allora noi, nei confronti di costoro, vediamo che la Chiesa non cessa mai di esercitare un’influenza la quale è contro la libertà.⁸⁶²

He then refers to a bulletin promulgated by the parish priest of the Ganzirri diocese. It begins with a polemic article entitled ‘Socialismo e lavoratori’. In the article it says:

È doloroso e vergognoso nello stesso tempo vedere nel nostro Paese i lavoratori che si fanno negatori della libertà dell’uomo e della fede cattolica quando s’iscrivono ai partiti socialisti.⁸⁶³ Relativamente a coloro che sono tesserati nel socialismo, ci dispiace dover applicare le disposizioni dei superiori, cioè: ‘1) coloro che sono alla direzione del socialismo sono privati dei Sacramenti anche a Pasqua; coloro che hanno aderito alle cooperative, ecc., come i loro capi, sono privati dell’uso dei Sacramenti’. Volete sapere che cosa significa questo? Prima di tutto, se è consentita un’osservazione di carattere morale, significa che a un certo punto la Chiesa fa servire il Sacramento da galoppino elettorale . . . In secondo luogo, vien soffocata la libertà di coscienza. Se per esempio un socialista o un comunista si rivolge a taluno che stia per entrare in Chiesa e gli dice: se entri in Chiesa sarai percosso, sapete che cosa succede? Deve rispondere del reato di violenza privata, che è un reato grave. E così, quando è minacciata la mancanza propinazione del Sacramento.⁸⁶⁴

He likens the denial of the Sacrament by the Church to the socialist worker to the latter threatening to punch a Catholic about to enter a church, the only difference being that the Church is allowed to do it, according to its own laws, while the

⁸⁶¹ Ibid., pp. 506-7.

⁸⁶² Ibid., p. 507.

⁸⁶³ He notes at this point that there is an article in the Lateran Pacts that bans priests from putting out political propaganda.

⁸⁶⁴ Ibid.

Communist or Socialist is not allowed to by Italian law, “ma di fronte al principio umano e sovrano dell’etica, della libertà, i due atti si equivalgono.”⁸⁶⁵

Ruggiero then makes an appeal to the Church to show the same respect for the liberty of others as they are prepared to extend to the Church.

Noi esprimiamo il massimo rispetto verso la Chiesa cattolica ed anzi possiamo affermare, senza tema di smentita, che da parte nostra non è stato fatto mai nessun atto di vilipendio nei suoi confronti. Però è necessario che la Chiesa abbia, nei confronti di quelli che sono i valori morali eterni, lo stesso rispetto. Siamo disposti a concedere che la Chiesa cattolica abbia una posizione di preminenza rispetto alle altre religioni, perché in effetti rappresenta la stragrande maggioranza degli italiani e potremo arrivare anche a stabilire, per esempio, per la Chiesa cattolica la condizione del *primus inter pares*, che è una condizione giuridica e morale ineccepibile. Può esistere una condizione di privilegio e di preminenza rispetto alle altre confessioni religiose, ma di fronte alla libertà che è sempre un principio eterno, tutte le confessioni devono essere uguali.⁸⁶⁶

Giancarlo Pajetta (Pci) says the whole purpose of constitutions is to guarantee the rights of the minorities. All the religious minorities in Italy feel that they have been freed from the oppression of the last twenty years. However, as far as the Constitution is concerned, they are not happy:

non si sentono garantite, protestano, hanno mandato a tutti noi la richiesta che sia riveduta quella formulazione [article 5], pur senza nessuno spirito anticattolico, senza nessuna avversione alla Santa Sede. È che quello che era buono in 1848 non è più buono oggi.⁸⁶⁷

Ugo Della Seta (Pri) presents the following amendment to article 5:

Lo Stato e le singole Chiese sono, ciascuno nel proprio ordine interno, indipendenti e sovrani.
I rapporti tra lo Stato e ogni singola Chiesa sono disciplinati per legge.⁸⁶⁸

He makes it clear from the outset that he has no religious axe to grind, is not speaking on behalf of any Church or specific religious faith, but is simply defending a principle, which he would use to defend Catholics if they, in the minority, were treated in the same fashion as the religious minorities in Italy are treated in this post-war period.⁸⁶⁹

⁸⁶⁵ Ibid.

⁸⁶⁶ Ibid.

⁸⁶⁷ Ibid., p. 524.

⁸⁶⁸ Ibid., p. 614.

⁸⁶⁹ Ibid., pp. 614-6.

Nevertheless, in his speech to the Assembly, De Gasperi conspicuously fails to deny that subordination of the minority religions is a problem in Italy; although he does make one concession, in relation to ordinary legislation, to the parties of the left: “Noi, se è necessario, al momento opportuno siamo disposti a votare con voi per togliere dal Codice penale qualsiasi umiliazione alle minoranze.”⁸⁷⁰

On the issue of punishment for crimes committed against Catholicism being greater than that for crimes against minority religions Mortati, laying aside his jurist's hat and putting on his party political one, says one has to take into account public feeling and public reaction to such crimes. “Ed è evidente che questa reazione, quest'offesa è più grave quando tocca le convinzioni della grande maggioranza dei cittadini ed è meno grave negli altri casi.”⁸⁷¹ He says it must be noted that the Constitution says nothing in this regard, leaving the door open for future legislatures to amend the law in such a way as to realign this discrepancy.

Quella che importa rilevare . . . è che la Democrazia cristiana non porrà mai ostacolo ai provvedimenti che saranno proposti allo scopo di attuare una sempre maggiore uguaglianza di trattamento dei vari culti, nei limiti in cui tale uguaglianza sarà resa possibile dalla situazione di fatto.⁸⁷²

The magnanimity of the beginning of this comment will hardly have been enriched in its sincerity by its codicil.

(iii) The confessional State and the minorities

Cevolotto points out that creating a confessional State would mean that the other religions would become inferior to Catholicism, despite there existing a guarantee for them in the shape of the law dealing with ‘permitted religions’ and the provisions of draft articles 5, 14 and 15. In response, Moro (Dc) says he intends to clarify the reasons that he and his colleagues have presented and sustained the clause approved by the first Subcommittee. To Cevolotto's claim that article 1 of the Treaty would return Italy to the realms of a confessional state, he argues that the clause must be considered in relation to all the clauses that regulate the positions of other religious denominations within the Italian legal system. He reminds Cevolotto of the extraordinary breadth with which the principle of the freedom of other religious organisations has been laid down, and particularly the right to proselytise. He again

⁸⁷⁰ Ibid., p. 631.

⁸⁷¹ Ibid., pp. 741-2.

⁸⁷² Ibid., p. 742.

emphasises the Dc consensus with Terracini's additional amendment to regulate relations between the State and other religious organisations by means of concordats. He says that the sense of the clause being discussed is that the Catholic religion is the religion of the vast majority of the Italian people.⁸⁷³

Responding to a typical Giorgio La Pira speech which closed with an invocation to the Virgin Mary and the blessing of Almighty God on the Constitution,⁸⁷⁴ Paolo Rossi (Psi) said:

Non sono fra coloro che hanno trovato fuori di luogo il gesto ineffabile del divino olocausto con cui l'amico onorevole La Pira ha chiuso ispiratamente le sue nobili parole. Tutt'altro. Quel gesto solenne, nato spontaneamente da un fervente cristiano, vi assicuro che mi ha toccato. Ma esso ha costituito per me un'illumunazione politica: quello Stato che l'onorevole La Pira ed i suoi amici propugnano è uno Stato sicuramente confessionale, uno Stato sotto il segno della Croce. Io accetto con deferenza quel segno, ma bisogna anche preoccuparsi delle minoranze non cattoliche in Italia. In questo, o amici, è vero quello che Kant ha detto: la dignità e la libertà di un uomo sono la dignità e la libertà di tutti gli uomini. Debbo, perciò, insistere ancora un momento nel richiamare all'Assemblea alcuni principî fondamentali . . . Non giova allo Stato l'etichetta confessionale, né giova alla Chiesa la protezione del braccio secolare.⁸⁷⁵

Costantino Mortati, the eminent Catholic jurist, argues that the apparently opposing views found in article 5, allegedly creating a confessional State, and article 14 (draft), stating that religious freedom is due to all citizens, are easily reconciled: "lo spirito liberale che informa l'articolo 14 offre una riprova del carattere non confessionale dello Stato, e del proposito della costituente di porre i vari culti in posizione di parità fra di loro."⁸⁷⁶

Amerigo Crispo (Udn) warns against the recreation of a confessional State if the Treaty, with its reintroduction of the first clause of the Albertine Statute, is allowed to stand:

Perché qui non si vuol dire già che la grande maggioranza dei cittadini italiani professa la religione cattolica: qui si vuol dire che lo Stato ha una religione; mentre lo Stato, come tale, non ha una religione, ma garantisce la religione; e si vuole che lo Stato italiano sia uno Stato cattolico, onde è da chiedere se i non cattolici facciano parte della Repubblica italiana.⁸⁷⁷

⁸⁷³ CRAC, vol. 6, pp. 150-1.

⁸⁷⁴ CRAC, vol. 1, pp. 313-24.

⁸⁷⁵ Ibid., p. 415.

⁸⁷⁶ Ibid., p. 740.

⁸⁷⁷ Ibid., p. 367.

Tupini replies: “Non bisogna mai commentare *per absurdum*.” But, as we shall see with a brief look at the treatment of the non-Catholic minorities in post-war Italy, this was not an absurd comment.

Whilst the first article of the Albertine Statute created a religion of State, Ferdinando Targetti (Psi) points out that it also says that the minority religions are to be ‘tolerated’, something that is omitted from the Treaty of 1929,⁸⁷⁸ while Umberto Grilli (Psli), Amerigo Crispo, Bruno Villabruna, Giuseppe Fusco and Girolamo Bellavista (all Udn) all criticise the inevitable inferiority of status for minority religions as a result of the confessional state created by the insertion of the Pacts.⁸⁷⁹

(iv) The position of the Catholic Church in relation to the other churches

Riccio argues that the Catholic Church in Italy can in no way be called a ‘società privata’: it has too much history, tradition and responsibility for the spiritual well-being of the Italian people. He makes a clear distinction between the role of the Catholic Church and other religions:

La Chiesa cattolica . . . si pone ovunque di fronte allo Stato come una realtà sociale, evidentemente molto diversa da altri fenomeni religiosi, che si concretizzano in altre confessioni o associazioni religiosi. Questa realtà, se altrove non è evidente, in Italia è evidente. Onde il richiamo espresso alla sovranità della Chiesa ed ai Patti lateranensi è necessario nella Costituzione Italiana. Ciò non significa che l’Italia non può concordatariamente regolare i suoi rapporti con altre confessioni; ove queste lo chiedessero e lo Stato lo ritenesse, nulla vi sarebbe in contrario. Significa soltanto riconoscere un fatto storico e una situazione giuridica, in piena aderenza ad una realtà sociale. Invero non è creata una situazione di privilegio, lesiva della eguaglianza. Alle confessioni religiose è garantita la piena libertà; ed esse, quando venissero eventualmente a trovarsi nella stessa situazione della Chiesa cattolica, ben potrebbero venire in contatto con lo Stato attraverso un atto bilaterale.⁸⁸⁰

In response to an amendment to article 5 clause 1 suggested by Della Seta (“Lo Stato e le singole Chiese sono, ciascuno nel proprio ordine interno, indipendenti e sovrane”), Dossetti insists that it is inadmissible because autonomy and independence cannot be attributed to the minority churches in Italy as they do not

⁸⁷⁸ Ibid., p. 433.

⁸⁷⁹ Ibid., p. 654.

⁸⁸⁰ Ibid., p. 386. Whether the irony of this last remark was intentional or not is unclear, although Riccio, and members of the other parties, would certainly have been aware of the restrictions placed on the ‘*culti ammessi*’ and the fact that, in a confessional Italy, the latter would have little opportunity – even if their numbers allowed – of achieving spiritual and jurisdictional parity with the Catholic Church.

have as well-defined and complex an organisational, administrative and juridical structure as the Catholic Church.

Once the insertion of the Lateran Pacts had been secured, the position of the right-wing parties moderated slightly *a propos* the minority religions. Vincenzo Tieri summed up the position of the *Uomo qualunque* party:

Poiché io sono credente e cattolico secondo la religione cattolica apostolica romana . . . non ho nulla da obiettare ai riconosciuti diritti delle altre religioni, appagandomi oggi del fatto che la mia religione sia già stata riconosciuta, in sede costituzionale, come religione dello Stato al quale appartengo.⁸⁸¹

It is clearly stated, at this point, by a Catholic that the inclusion of the Pacts establishes Catholicism as the State religion.

However as Piero Agostino D'Avack points out:

Non deve . . . esistere una religione di Stato, o una filosofia di Stato, la quale abbia valore normativo per ciascuno dei cittadini dello Stato stesso, condizionando in un modo o nell'altro le manifestazioni della loro fede e del loro pensiero.⁸⁸²

(v) Problems faced by minority Churches

a) The education issue

Article 36 of the Lateran Concordat states that "L'Italia considera fondamento e coronamento della istruzione pubblica l'insegnamento della dottrina cristiana secondo la forma ricevuta dalla tradizione cattolica."⁸⁸³ Cevolotto makes an interesting point which has not hitherto been made: article 36 does not mean that religious education will be taught catechistically; it means that all aspects and all subjects of state education will be taught within the framework of Catholic religious principles. He goes on to point out the inevitable consequences for children of the Protestant or Jewish faiths who, already in the minority, would find it even more difficult to integrate with the Catholic majority and, moreover, their parents would not have the option of sending them to a Protestant or Jewish school simply because such schools did not exist. The only acceptable option for Cevolotto and his party would be a neutral educational system, that respected the freedom of all citizens. But

⁸⁸¹ Ibid., p. 668.

⁸⁸² D'Avack, *I rapporti fra Stato e Chiesa*, p. 316.

⁸⁸³ *Raccolta Ufficiale delle Leggi e dei Decreti del Regno d'Italia*, (a cura del) Ministero per la Giustizia, Rome, p. 5477; for an English translation see Pollard, *The Vatican and Italian Fascism (1929-32)*, p. 213.

this contradicted article 36 of the Concordat and the fervent view of Pius XI, who had stated during negotiations for the latter in his letter to Cardinal Gasparri:

Deve ancora necessariamente essere riconosciuto che il mandato educativo non spetta allo Stato, ma alla Chiesa, e che lo Stato non può impedire o menomare l'esercizio di tale mandato educativo che deve ispirarsi al tassativo insegnamento della verità religiosa.⁸⁸⁴

Dossetti also uses article 36 dealing with religious education in State schools to argue his case: he asks how one lesson per week of religious instruction (which, he says, does not impinge on any other lesson – nor are those who do not wish to participate in such classes coerced into doing so) can be interpreted as symptomatic of a confessional State or a violation of freedom of conscience. He then cites article 6 of the *culti ammessi* laws and article 2 of the law of 5th June 1930 which dispense with the obligation to attend those lessons for those students whose parents make such a request to the head of the school. He also quotes articles 23 and 24 of the decree enforcing the *culti ammessi* laws, which allows non-Catholic faiths to have their own religious instruction, where numbers are sufficient to justify doing so.⁸⁸⁵

b) Institutional paranoia

In the preliminary meetings of the first subcommission, Moro, in his *relazione*, makes a plea on behalf of Catholics:

Noi abbiamo naturalmente vivo non meno degli altri il desiderio di salvaguardare la libertà delle coscienze. Ma si potrebbe giustamente, democraticamente far violenza alla coscienza religiosa del novantanove per cento degli italiani, impedendole di far sentire i suoi palpiti e di trovar il suo

⁸⁸⁴ Pacelli, *Diario della Conciliazione*, Appendix XLII and cited in CRAC, vol.1, p. 544.

⁸⁸⁵ However, Dossetti does not tell the whole story: article 23 of the law ratifying the 'culti ammessi' laws states: "I genitori, o chi ne fa le veci, i quali non desiderano che sia impartita ai loro figli l'istruzione religiosa nelle scuole pubbliche, debbono fare apposita dichiarazione scritta al capo dell'istituto all'inizio dell'anno scolastico. Quando il numero degli scolari lo giustifichi e quando per fondati motivi non possa esservi adibito il tempo, i padri di famiglia professanti un culto diverso dalla religione dello Stato possono ottenere che sia messo a loro disposizione qualche locale scolastico per l'insegnamento religioso dei loro figli: la domanda è diretta al provveditore agli studi il quale, udito il consiglio scolastico, può provvedere in senso favorevole. In caso diverso e sempre quando creda, ne riferisce al Ministero dell'educazione nazionale, che decide di concerto con quello della giustizia e degli affari di culto. Nel provvedimento di concessione dei locali si devono determinare i giorni e le ore nei quali l'insegnamento deve essere impartito e le opportune cautele." (R.D. 28 febbraio 1930, n. 289, Article 23 in De Martino, *Leggi d'Italia*, p. 319.) See also Giorgio Peyrot's study, *Il problema dell'insegnamento della religione nelle pubbliche scuole elementari in relazione ai maestri ed agli alunni evangelici*, presented to the *Congresso dell'Associazione Insegnanti Cristiani Evangelici (AICE)*, at Agape (Torino) 26th August, 1954, Firenze, Tipografia Bruno Coppini, 1955. Peyrot's work examines the ostracisation of non-Catholic students and their parents who attempted to use this option.

nutrimento, perché l'uno percento degli italiani non abbia una fastidiosa convivenza?⁸⁸⁶

Moro here is setting the tone for an exaggerated alarmism amply deployed by the *Dc costituenti*, to ensure that freedom of conscience and propaganda for all religions would not have deleterious consequences for the Catholic Church. The Pacts, even if they had not been mentioned in the Constitution would in all likelihood have remained valid until such time as both contracting parties decided to alter them: neither the financial position nor the legal position of the Vatican would necessarily have been affected.

Even Meuccio Ruini (Misto), the President of the Commission for the Constitution, displayed great concern over the risk of minority churches contravening state legislature:

Le proposte presentate divergono dal testo della Commissione in questo: mentre conservano l'affermazione fondamentale che le altre confessioni religiose diverse dalla cattolica hanno diritto di organizzarsi secondo i propri statuti, sopprimono con l'emendamento Pajetta [Gian Carlo, Pci] l'espressione 'in quanto non contrastino con l'ordinamento giuridico italiano'. La Commissione ha ritenuta necessaria questa espressione, che non intacca il rispetto agli ordinamenti giuridici interni delle singole confessioni, e si limita a richiedere che non vi sia contraddizione con l'ordinamento giuridico dell'Italia. Non è da dimenticare che oltre alle confessioni – venerate, rispettabilissime, che tutti conosciamo – potrebbero sorgere culti strani, bizzarri (l'America insegna) che non corrispondessero all'ordinamento giuridico italiano.⁸⁸⁷

Such comments certainly suggest a level of institutional paranoia regarding the activities of the minority protestant groups: the existing Lateran Pacts, with all their contradictions and contraventions of the terms of the Constitution, were allowed to become an intrinsic part of that Constitution; whereas minority religious groups, it was being argued, with miniscule numbers of followers had to ensure that their internal regulatory norms did not contravene the Italian juridical system in any way, simply because of the potential risk to the nation of 'strange' and 'bizarre' cults possibly starting up in Italy at some indeterminate time in the future.

⁸⁸⁶ ACD, Busta 74, Fasc. 1, *Commissione per la Costituzione: 1° Sottocommissione. Relazione del Deputato Aldo Moro sui 'Principii dei rapporti sociali (culturali)'*, p.92.

⁸⁸⁷ CRAC, vol. 1, p. 659.

c) *Interference by the Catholic Church*

Cevolotto discusses the issue of whether one religion has the right to impose its will on all other religions active within the same state. He says that if there is to be any sort of equality between the different religious groups then “non vi può essere una legge dello Stato che crea ad un culto una posizione superiore, di fronte ad una posizione deteriore degli altri culti.”⁸⁸⁸ A religion of state, he argues, presupposes that one religion prevails over the others and that, in such circumstances, the very essence of freedom of religion and freedom of conscience is violated.

Luigi Preti (Psli) refers directly to the need to protect the minority religions from the interference of the Catholic Church via the State:

Bisogna che dalla Carta costituzionale si possa chiaramente evincere che i culti non cattolici godranno domani di quella libertà effettiva, che ancora in questo momento – non dimentichiamolo – la legislazione loro nega. Tanto più che la Chiesa cattolica, in quanto si ritiene depositaria della definitiva verità, ha sempre creduto legittimo pretendere dallo Stato delle limitazioni alla libertà di coloro che essa considera i predicatori dell'errore.⁸⁸⁹

Preti then supports this statement by quoting extensively from the letter sent by Pius XI to Cardinal Gasparri (quoted earlier in the thesis):

Più delicata questione si presenta quando con tanta insistenza si parla della non menomata *libertà di coscienza* e della *piena libertà di discussione*. Non è ammissibile che siasi intesa libertà assoluta di discussione, comprese cioè quelle forme di discussione, che possono facilmente ingannare la buona fede di uditori poco illuminati, e che facilmente diventano dissimulate forme di una propaganda, non meno facilmente dannosa alla religione dello Stato, e, per ciò stesso, anche allo Stato e proprio in quello che ha di più sacro la tradizione del popolo italiano e di più essenziale la sua unità. Anche meno ammissibile Ci sembra che si sia inteso assicurare incolume, intatta, *assoluta libertà di coscienza* tanto varrebbe dire che la creatura non è soggetto al Creatore; tanto varrebbe legittimare ogni formazione o piuttosto deformazione della coscienza, anche le più criminose e socialmente disastrose. Se si vuol dire che la coscienza sfugge ai poteri dello Stato, se si intende riconoscere, come si riconosce, che, in fatto di coscienza, competente è la Chiesa, ed essa sola in forza del mandato divino, viene con ciò stesso riconosciuto che in Stato cattolico, libertà di coscienza e di discussione devono intendersi e praticarsi secondo la dottrina e la legge cattolica.⁸⁹⁰

The significance of the letter for the minority religions becomes apparent when one considers that the day before this speech by Preti, Italy effectively became a

⁸⁸⁸ Ibid., p. 543.

⁸⁸⁹ Ibid., p. 688.

⁸⁹⁰ Pacelli, *Diario della Conciliazione*, Appendix XLII & cited in CRAC, vol. 1, p. 689.

confessional State with the vote for the insertion of the Lateran Pacts into the Constitution. But could such a situation exist in a democratic Republic? And if so, what would be the consequences for the minority religions? Preti is convinced that the situation for the minorities can only worsen:

sta di fatto che, per la Chiesa, vi è una sola vera libertà: quella di assentire liberamente alla sua dottrina. La libertà dei non fedeli, come risulta dalle dichiarazioni di Pio XI, non è che l'errore, il quale si può prudentemente tollerare in omaggio al libero arbitrio umano, ma che bisogna isolare e rendere impotente.⁸⁹¹

d) Interference by the State

Cevolotto highlights some of the problems the minority churches face in the struggle for equality in the postwar period: a ruling by the Court of Appeal in Rome stating that since there is a religion of State which is superior to other religions, evangelical churches are not allowed to proselytise; when the Waldensian Church in Livorno tried to invoke the law that allowed for State help in rebuilding churches destroyed by the allied bombing campaigns, the Tuscan chief of public works refused to help because that particular law referred only to Catholic churches.⁸⁹²

Furthermore, Della Seta (Pri) is keen to point out that all Churches should be totally free to support and defend their own dogma, their own institutional framework and be free to exercise their own form of worship. In the same way, religious criticism on a theological and philosophical level must be allowed to discuss those dogmas, while on a moral and juridical level one should be allowed to discuss the administrative framework of a given Church, and one must be allowed to evaluate to what extent a particular liturgy has more of a material or spiritual bias. But the key element in all of this is that the Church should remain free from interference by the State. Thus, the independence and sovereignty enjoyed by the Catholic Church, should also be given to the Churches of the minority religions, because they also have statutes (in the case of the Chiesa Valdese) and institutional and disciplinary norms (in the case of Judaism). He then explains the difference between a question of fact and a question of principle in relation to these Churches:

questi statuti, quando nel fatto esistono, debbono essere riconosciuti come già consacranti la indipendenza e la sovranità di queste Chiese; quando non esistono, rimane il principio, che non può non essere consacrato nella

⁸⁹¹ CRAC, vol. 1, pp. 689-90.

⁸⁹² Ibid., p. 544.

Costituzione, come diritto potenziale per ogni comunità religiosa costituita o costituenda.⁸⁹³

Giancarlo Pajetta, on behalf of the Pci, puts forward the following amendments to article 5: in the fourth clause, remove “in quanto non contrastino con l’ordinamento giuridico italiano”; replace clause 5 with the following: “I rapporti con lo Stato sono regolati, ove sia richiesto, per legge, sulla base di intese con le rispettive rappresentanze.”⁸⁹⁴ He wants to present these amendments in order not only to clarify the need for absolute respect of the conscience of worshippers whatever church they belong to, but also to ensure that the equality and liberty of all the churches before the State is explicitly declared:

Mantenere la dizione proposta nel progetto di Costituzione, vorrebbe dire porre in una condizione particolare le altre confessioni religiose, sarebbe creare per le altre Chiese una sorta di discriminazione che apparirebbe come un ingiusto sospetto o almeno come una minorazione che non può essere certo opportuna.⁸⁹⁵

He says that since none of the parties want to have any reference to article one of the Albertine Statute, and since no-one wants to discuss the *culti tollerati* and *ammessi*, but include absolute equality, then his amendment should be accepted. He pointedly refers to the many calls for the unity of the nation and suggests that those who do not count themselves in the religious majority should not be ignored when discussing that unity, because when the nation called on them during the war, they freely gave their commitment and indeed their lives for the nation.⁸⁹⁶

Even non-believers, says De Gasperi, feel that the State neither has the force nor the authority

di afferare e dirigere la coscienza della singola persona e [sente] il bisogno dell’apporto dell’insegnamento della morale evangelica che viene dalla Chiesa, che sul Vangelo si fonda. Innegabilmente è opinione comune . . . che questa morale evangelica sia necessaria per la fermentazione sociale della giustizia nelle masse popolari.⁸⁹⁷

Gianni Long identifies a problem in the wording of article 5, clause 5:

⁸⁹³ Ibid., p. 616.

⁸⁹⁴ Ibid., p. 627.

⁸⁹⁵ Ibid.

⁸⁹⁶ Ibid., pp. 627-8.

⁸⁹⁷ Ibid., p. 629.

Quale preciso strumento giuridico volessero indicare i Costituenti con la parola ‘intese’ resta poco chiaro. Non si trattava di un concetto familiare alla cultura giuridica del tempo, ed anche i suggerimenti provenienti dagli studi di diritto comparato, predisposti per la Commissione . . . sono tutt’altro che determinanti. L’unico elemento chiaro è che la Costituente ha voluto introdurre una regolamentazione che assomigliasse a quella concordataria . . . senza però coincidere con essa.⁸⁹⁸

(vi) Draft article 14 and the difficulty of the ‘buon costume’ and ‘ordine pubblico’ arguments and their interpretation

Tutti hanno diritto di professare liberamente la propria fede religiosa, in qualsiasi forma individuale o associata, di farne propaganda e di esercitare in privato ed in pubblico atti di culto, purché non si tratti di principi o riti contrari all’ordine pubblico o al buon costume.

The first appearance of the two phrases ‘buon costume’ and ‘ordine pubblico’ in state legislature was in the ‘culti ammessi’ laws of 1929. During the debates of the Constituent Assembly, at subcommission level, both Dossetti and Cevolotto included the phrase “in quanto non sia contrario all’ordine pubblico e al buon costume” in their original proposals, with Cevolotto adding the phrase “alla morale”. Cevolotto’s second article of four proposed reads as follows:

2. È garantita piena libertà di esercizio e di propaganda a tutti i culti e confessioni, che non siano contrari all’ordine pubblico, alla morale o al buon costume.⁸⁹⁹

However, Ugo Rodinò (Dc) does not believe that this goes far enough:

l’affermata e legittima libertà di culto e di propaganda, riconosciuta ad ogni fede religiosa, dovrebbe trovare un limite non solo, come già stabilito, nelle esigenze dell’ordine pubblico e del buon costume, ma anche nella opportunità di evitare manifestazioni offensive per la religione cattolica e, di conseguenza, per la enorme maggioranza dei cittadini.⁹⁰⁰

With all the indulgence and good will in the world, it is difficult to imagine, unless the liturgies of other faiths included public anti-Catholic proclamations, what this proposal could mean in practice except a total prohibition of public religious expression for other faiths. In a generous interpretation of Rodinò’s intentions, it has slipped his mind that other religions might be offended, that his proposal allows non-

⁸⁹⁸ Long, *Alle origini del pluralismo confessionale*, p. 365.

⁸⁹⁹ CRAC, vol. 6, p. 788.

⁹⁰⁰ CRAC, vol. 1, p. 532.

Catholic religions to offend each other, and that no restraint whatever is imposed on Catholics.

Luigi Preti (Psli) mentions a number of cases under Fascism of Protestant schools and churches being closed down and pastors being driven away from their dioceses as a direct result of the '*buon costume*' and '*ordine pubblico*' phrases in the *culti ammessi* laws. He points out that only a matter of days prior to the current debate a Protestant church in Trapani had been closed down when it had only just reopened after the liberation. After favourable reports from an independent inquiry into its activities, the Government was still refusing to subscribe to full *libertà di culto* and sanction it being reopened again. He goes on:

L'articolo 14 [draft] della Costituzione ha indubbiamente un merito: quello di affermare esplicitamente la libertà di propaganda religiosa. Ma ha il grave torto di sottoporre ancora l'esercizio dei culti acattolici alle famose limitazioni dell'ordine pubblico e del buon costume.⁹⁰¹

Preti states that in none of the modern constitutions that he has recently examined (British,⁹⁰² American, French and Russian) does such a limitative phrase appear. He explains the implications:

Ordine pubblico significa, in pratica, arbitrio della polizia,⁹⁰³ e la clausola del buon costume – a meno che non abbia lo stesso significato della clausola dell'ordine pubblico – è, per lo meno, offensiva nei confronti di un culto religioso.⁹⁰⁴

Ugo Della Seta (Pri) finds the phrase "purché non si tratta di principî o riti contrari all'ordine pubblico o al buon costume" as insulting to the minority religions as Preti does:

Non che la restrizione, in sé, non sia ingiusta; è ingiusta refirla solo alla fede religiosa delle minoranze. Degenerazioni, sotto la parvenza della spiritualità, del sano sentimento religioso, con credenze superstiziose e riti paganeggianti, se ne possono avere in tutte le fedi, in tutte le Chiese.⁹⁰⁵

Walter Binni (Psli) is against the use of the *buon costume* and *ordine pubblico* phrases in the first clause of draft article 14, which he considers to be "o inutilmente offensive o realmente dannose" and calls for their complete removal. He

⁹⁰¹ Ibid., p. 691.

⁹⁰² It is difficult to know to what Preti is referring when he mentions the 'British Constitution', which in written form, does not exist.

⁹⁰³ Mortati later denies that this is the case. See CRAC, vol. 1, p. 741.

⁹⁰⁴ Ibid., p. 691.

⁹⁰⁵ Ibid., p. 733.

dismisses Mortati's argument that since they appear in decrees and police guidelines, they should also be included in the Constitution:

appunto per ciò noi dovremmo risparmiare la loro inserzione nel testo della Costituzione, che deve avere massima sobrietà e solennità e, secondo me, non deve portare neppure l'ombra di qualsiasi irrispettosità, di qualsiasi offesa per culti o religioni delle quali noi abbiamo il massimo rispetto.⁹⁰⁶

In the final version of the article, when it became article 19, the phrase "all'ordine pubblico", as a result of pressure from the Protestant Churches and the *laici*, was omitted. The full article read:

Tutti hanno diritto di professare liberamente la propria fede religiosa in qualsiasi forma, individuale o associata, di farne propaganda e di esercitarne in privato ed in pubblico il culto, purché non si tratti di riti contrari al buon costume.

(vii) The Protestants and the Constituent Assembly

As mentioned earlier, after the war, the Protestants looked not only to the Constituent Assembly, but also outside Italy for support. In America committees for religious liberty in Italy were set up and, to counterbalance the lack of faith they were beginning to have in the Italian government, great confidence was placed by the Protestants in the ability of the United Nations to intervene at an international level on their behalf.⁹⁰⁷ As Mario Piacentini wrote in *Luce*:

Anzitutto – siccome il problema della tutela delle minoranze religiose . . . è di fondamentale importanza per la costruzione dell'edificio della pace dei popoli – noi preferiremmo che il problema fosse risolto sul terreno internazionale; e, cioè, sarebbe indispensabile che presso l'ONU fosse costituito un ufficio legale, il quale elaborasse, esso, un *progetto-tipo* di Costituzione, che dovesse, poi, esser preso per modello dai singoli Stati. In tal modo, questo problema verrebbe risolto, senza l'interferenza di quelle opposizioni occulte che, nei singoli Stati, per una ragione o per l'altra, sono riuscite, sempre, a sacrificare i diritti delle minoranze. Vi dovrebbe essere, altresì, la possibilità di ricorso all'ONU per la violazione, da parte delle autorità dei singoli Stati, di certi punti fondamentali, quando le anzidette autorità trascurassero, esse, di far giustizia.⁹⁰⁸

⁹⁰⁶ Ibid., p. 818.

⁹⁰⁷ Long, *Alle origini del pluralismo confessionale*, pp. 255-6.

⁹⁰⁸ M. Piacentini, *La libertà religiosa e la Costituente*, in *Luce*, 30th June 1946; cited in Long, *Alle origini del pluralismo confessionale*, p. 256.

From the same article Long mentions three dispositions that Piacentini proposes should be included at the end of the Constitution:

- a) l'abrogazione delle norme tuttora vigenti incompatibili con la Costituzione;
- b) il controllo di costituzionalità, da parte della magistratura ordinaria, su tutti gli atti legislativi e amministrativi;
- c) il diritto di resistenza, da parte del cittadino, contro atti legislativi ed amministrativi contrari ai principi costituzionali.⁹⁰⁹

Despite the creation of the Federal Council of Churches, the political strategy of the minority churches was delineated by the *Tavola valdese*. They came up with a two pronged campaign:

promuovere un netto separatismo eliminante la possibilità della formazione di uno Stato confessionale; ed in pari tempo essere pronti a fare presente, punto per punto, i diritti che vi è necessario veder sanciti e tutelati nelle leggi, se in tali termini si dovesse ridurre la nostra azione.⁹¹⁰

Their position was extremely weak regarding any discussion of Church/State relations because they were considered juridically inferior to the Catholic Church by dint of the Lateran Pacts and were thus isolated in any negotiations with the State. Their only option, according to Long, was “una scelta senza equivoci, favorevole al separatismo e contraria ad ogni tipo di concordato.”⁹¹¹

Having established that their primary grievance was against the Catholic Church and the Concordat, they had to try to ally themselves with some institution with the power in which they were so lacking. The new democratic State, creating its new Constitution, seemed to fit the bill perfectly. But to have any influence on the format of the Constitution they would need support from political parties, or at least prominent individuals within those parties. However, their all-out offensive on the confessional State and the Concordat could have done little or nothing to gain the Protestants sympathy among the general (i.e. Catholic) population and would certainly have made members of the Constituent Assembly think twice about taking up their cause – perhaps symptomatic of their political naïvety. Protestant doctrinal restrictions added to this problem: many groups (particularly pentecostals) considered it illegal to get involved in political wrangling of any kind. At the other end of the scale some local churches tried to create their own political parties and

⁹⁰⁹ Long, *Alle origini del pluralismo confessionale*, p. 257.

⁹¹⁰ Ibid., p. 258.

⁹¹¹ Ibid., p. 259.

sought direct alliances with established parties, in some cases even the Christian Democrats.⁹¹²

Although the number of documents produced by Protestant sources on religious freedom during the period 1946-47 was enormous, Long concentrates on those sent to the Assembly by the *Consiglio federale*. Just before the elections to the Assembly, a manifesto signed by ‘I Cristiani evangelici d’Italia’ and backed by the *Consiglio federale*, summarised their position:

Italiani, poiché non può sussistere autentica libertà umana, civile e politica, se non sul fondamento della libertà religiosa uguale per tutti, occorre eliminare ogni residuo del vecchio Stato confessionale. Pertanto noi Cristiani Evangelici rivendichiamo i seguenti principi: *la piena e completa libertà di Coscienza e di Religione* e quindi libertà assoluta di associazione, discussione, stampa e propaganda per tutti, in modo che ciascuno – se credente – possa adorare Dio e testimoniare la Sua verità secondo le indicazioni della propria coscienza; *l’assoluta indipendenza di tutte le Chiese dallo Stato*, per cui l’apertura dei templi, le riunioni religiose, la nomina dei ministri di culto, l’ordinamento degli enti ecclesiastici e l’espletamento della loro attività, avvengano in piena libertà, nell’ambito del diritto comune; *la neutralità religiosa*, che non è professione di ateismo, ma imparzialità dello Stato, non confessionale e libero di ogni ingerenza ecclesiastica. Alla parità dei culti ed alla eguaglianza dei cittadini indipendentemente dal culto professato, consegue la libera attività delle Chiese, la laicità della scuola pubblica [cf. Concordat article 36] e la libertà dell’insegnamento religioso privato.⁹¹³

Long adds that “una articolata protesta contro la vigente legislazione sui culti era stata indirizzata dalla Tavola valdese al governo italiano sin dal 2 gennaio 1946.”⁹¹⁴

The above document had the backing of the newly formed *Centro evangelico di cultura*, as did an extensive volume by Giorgio Peyrot entitled *La libertà di coscienza e di culto di fronte alla Costituente italiana*. Peyrot’s essay was an attempt to explain the Protestant position to as many people as possible with a special print run of 650 copies to be circulated among the newly elected members of the Constituent Assembly. After a brief analysis of the current juridical position of the Protestants, he outlines the three main areas of concern for them: freedom of conscience, which cannot be subject to vague limitations such as reference to public order or degrees of morality, should include the individual’s right to choose his faith or to choose whether he has a faith or not and should guarantee equal civil and

⁹¹² Ibid., p. 261.

⁹¹³ *Per la libertà religiosa*, in *Testimonianza*, June-August 1946, p.60; cited in Long, *Alle origini del pluralismo confessionale*, p. 268.

⁹¹⁴ Long, *Alle origini del pluralismo confessionale*, p. 269.

political rights for all citizens irrespective of their religion;⁹¹⁵ parity of denominations, including equal treatment before the law and the absence of privileges or restrictions for any of them; lastly, religious neutrality of the State – Peyrot believes the State should not have its own religion, and state schools should not be allowed to teach religion, but full approval should be given for private religious schools to be set up.⁹¹⁶ There is no doubt that the manifesto put forward by the *Consiglio Federale delle Chiese Evangeliche in Italia* was ‘high risk’ and even Gianni Long describes it as “forse anche un poco ‘impolitica’ per la sua estrema chiarezza.”⁹¹⁷

By the winter of 1947 the number of documents sent to the Constituent Assembly by the *Consiglio federale* had increased again. Equal juridical, civil and political rights of all the citizens of Italy, whatever their religion, was still a genuine hope for the *Consiglio* in February 1947 when it sent a letter to the Constituent Assembly calling for the latter to finish the work of the *Risorgimento* started a hundred years earlier

proclamando in modo esatto ed esplicito il principio della aconfessionalità dello Stato, base essenziale della libertà di coscienza, di religione e di culto, affinché nelle leggi che seguiranno, l'Italia non figuri seconda a nessuna nazione nella uguaglianza di tutti i suoi cittadini di fronte alla legge.⁹¹⁸

Three days later the *Consiglio* sent a document privately to all members of the lay parties, outlining their concerns about draft articles 5, 14 and 15 of the Constitution.⁹¹⁹ As Gianni Long points out, the first clause of article 5 (“Lo Stato e la Chiesa cattolica sono, ciascuno nel proprio ordine, indipendenti e sovrani”) would be a positive step if with that affirmation one proceeded to introduce the separatist principle. But then came the hammer blow of the second clause, introducing the Lateran Pacts, to which the *Consiglio federale* responded, displaying a much greater depth of knowledge of the agreement than many *costituenti*:

⁹¹⁵ The idea of an individual having the right to choose whether he or she has a faith or not, although not unique to the Protestants, was only discussed by a handful of *laici* in the Constituent Assembly, and nowhere is such a concept discussed in Catholic arguments.

⁹¹⁶ G. Peyrot, *La libertà di coscienza e di culto di fronte alla Costituente italiana*, Rome, Centro evangelico di cultura, 1946; cited in Long, *Alle origini del pluralismo confessionale*, pp. 269-70.

⁹¹⁷ Long, *Alle origini del pluralismo confessionale*, p. 271.

⁹¹⁸ *Lettera del Consiglio Federale delle Chiese Evangeliche d'Italia al Presidente dell'Assemblea Costituente italiana in occasione del 17 febbraio 1947*, in *Documentazione per il Corso di Diritto ecclesiastico tenuto dal prof. Giorgio Peyrot (DCDE)*, doc. B-7; cited in Long, *Alle origini del pluralismo confessionale*, p. 271.

⁹¹⁹ G. Peyrot, *Note agli articoli 5, 14 e 15 del progetto di Costituzione che verrà presentato all'Assemblea Costituente*, Roma, Consiglio Federale delle Chiese Evangeliche d'Italia, 1947.

Questo comma, nel suo insieme, non può assolutamente essere accettato. Tanto meno questa prima parte che sospinge lo Stato verso un dichiarato confessionarismo. L'Assemblea Costituente deve chiaramente conoscere e valutare in tutta la loro portata le conseguenze dell'eventuale deprecata approvazione di questo comma. Esse sono: 1°) La proclamazione di una religione di Stato; 2°) La proclamazione di quel confessionarismo che fu mantenuto nel nostro Paese dalla politica ecclesiastica di Casa Savoia; 3°) L'inserire implicitamente nella costituzione una delle più illiberali realizzazioni giuridiche del fascismo; 4°) La limitazione della sovranità stessa dello Stato (specie per via degli artt. 5 e 36 del Concordato); 5°) L'aperta violazione del principio di eguaglianza dei cittadini di fronte alla legge (art. 5 del Concordato); 6°) L'aperta negazione della libertà di religione in contrasto con l'art. 14 della costituzione; 7°) La permanenza a carico dello Stato di rilevanti oneri finanziari che non hanno mai avuto una giustificazione logica sia giuridica che storica.⁹²⁰

This document, which was not official and had only a limited circulation, accepted Togliatti's alternative formula that (Catholic) Church/State relations “sono regolati in termini concordatari” but with the proviso “in quanto non contrastino con la presente Costituzione”. This wording left open the possibility for the religious minorities to negotiate their own concordats with future governments. These opinions were put into a formal letter sent to all members of the Constituent Assembly on the 21st February 1947 which also contained an explicit condemnation of the insertion of the Lateran Pacts into the new Constitution:

Ricorda che i Patti Lateranense: 1°) proclamando l'Italia Stato confessionale e la confessione cattolica romana sola religione dello Stato, negano l'eguaglianza dei culti e distruggono la neutralità religiosa dello Stato; 2°) negano l'eguaglianza di tutti i cittadini di fronte alla legge, facendo dipendere dalla decisione di un tribunale ecclesiastico cattolico l'idoneità di taluni di essi ai pubblici uffici; 3°) violano la libertà di coscienza, obbligando tutti i cittadini, quali che siano le loro convinzioni, a contribuire finanziariamente al mantenimento di una confessione particolare.⁹²¹

Representatives of the religious minorities were granted an audience with the provisional Head of State Enrico De Nicola on the eve of the vote on final article 7, which, as shown above, was passed in the least favourable format for the Protestant minorities. Immediately after the vote on article 7, the *Consiglio federale* wrote again to all the members of the Constituent Assembly. In a very dry letter they reminded the members of all parties of the promise they had made not to harm religious

⁹²⁰ Ibid.; cited in Long, *Alle origini del pluralismo confessionale*, p. 272.

⁹²¹ *In difesa della libertà di religione*, Dichiarazione del Consiglio Federale delle Chiese Evangeliche d'Italia (21 febbraio 1947), in *DCDE*, doc. B-9; cited in Long, *Alle origini del pluralismo confessionale*, p. 273.

freedom and asked that they apply this promise to the vote on article 14 (draft). In another document the Council, whose original demands had by now been totally undermined by the outcome of the article 7 vote, put a number of requests to the Constituent Assembly.

The first request relates to the suppression of the reference to public order contained in draft article 14.⁹²² The second results from the transferral (as debated by the Assembly) of points dealing with relations between the State and the non-Catholic confessions to article 14. The council asked that the Assembly clearly affirm that: “tutte le confessioni religiose sono uguali di fronte alla legge e si reggono sulle base dei propri statuti.”⁹²³ This, for the Protestants, meant the Catholic Church included. But as Long explains, there were two further points in the draft with which the Protestants were not satisfied: the fact that the Constitution spoke only of the ‘freedom of the individual’ and not of ‘equality between religions’; and the reference to the restrictions of the Italian juridical system on the self-governance of the confessions themselves.

Although the result of the vote on article 7 was predictable, Protestants felt deeply embittered towards the Dc party and the Communists for having delivered the vote for the confessional State, as the following condemnation of their collaboration shows:

Pur lasciando da parte ogni considerazione di carattere politico, non si può fare a meno di constatare le affinità che esistono fra la mentalità collettivista cattolica e quella comunista. Nonostante le opposizioni di principi professati resta il fatto che il Cattolicesimo è una religione di autorità imposta come il comunismo è un ordinamento di autorità imposta. Nell’uno e nell’altro gli individui contano fino a un certo punto. Essi esistono non come fini a se stessi, ma in funzione della collettività. Ed è forse questa affinità che rende più esasperante la lotta dell’un sistema contro l’altro.⁹²⁴

The issue of religious freedom as dealt with by the *Costituenti* raised protests from all Protestant groups. The following comment appeared in *Luce*:

È chiaro che ‘eguaglianza di libertà’, esistendo un articolo 7 ed essendo costituzionalmente sancito che gli statuti delle minoranze religiose non devono ‘contrastare’ con l’ordinamento giuridico italiano (nel quale costituzionalmente sono contemplati Concordato e Trattato Lateranense!), è una formula vuota di significato ed atta soltanto a sancire i privilegi materiali

⁹²² This was accepted by the Constituent Assembly: see section B3 (vi) of this thesis.

⁹²³ Long, *Alle origini del pluralismo confessionale*, p. 274.

⁹²⁴ Manfredi Ronchi, *Stato e Chiesa romana nella Costituzione italiana*, in *Testimonianza*, April 1947, p. 57; cited in Long, *Alle origini del pluralismo confessionale*, p. 275.

e morali della religione della maggioranza, che è anche religione di Stato.⁹²⁵

The last clause of draft article 5 which allowed any future negotiations on relations between minority churches and the State to be undertaken on the basis of ‘intese’ or agreements with the respective organisations, was passed with very little comment from the Protestants, but was nevertheless the cause of much internal debate later. Should the ‘agreements’ be used as a tool to move the debate on? Should they be ignored and the religious freedom debate be continued without them? Or should the Protestants let the dust settle for a while before reigniting the arguments? The *Sinodo valdese* chose the latter, nominating a commission to study the issue. A subsequent general meeting of the *Sinodo delle Chiese metodiste e valdesi* in Torre Pellice, published a document on religious freedom, of which the following are extracts:

Il Sinodo, rileva che il mantenimento della *laicità dello Stato democratico* è premessa indispensabile al raggiungimento di una autentica libertà religiosa. In tale quadro ritiene che sia indispensabile la piena attuazione delle norme costituzionali, ed in particolare del comma 3 dell’art. 8 che prevede come metodo per definire i rapporti tra Stato e organizzazioni religiose la legge su base di *Intese* . . . È improcrastinabile l’abrogazione della legge sui culti ammessi del 1929 . . . Esprime inoltre preoccupazione per i progetti enunciati da membri del Governo per ciò che riguarda la scuola, che rischiano di impedire il libero dialogo e la convivenza di gruppi di diversa religione e quindi di favorire gravi discriminazioni.

This document was not published, as it might appear, in the immediate aftermath of the new Constitution, but in August 2001 in the annual report of the *Sinodo*, ‘Coscienza e libertà’.⁹²⁶ The fact that abrogation of the ‘culti ammessi’ laws had still not taken place in 2001, clearly illustrates the inertia from government and ecclesiastical sources that the minority religions were, and still are, faced with.

However, in 1947, both the *Sinodo valdese* and the *Consiglio federale* seemed on the whole quite happy with the situation in which they found themselves post-Constitution.⁹²⁷ Such an attitude seems quite naïve, given that the position of privilege enjoyed by the Catholic Church had been reinforced, the laws dealing with the *culti ammessi* remained untouched and the unaccountability of the police with

⁹²⁵ G. Gonnet, *Egualemente liberi?*, in *Luce*, 30th April 1947 & Long, *Alle origini del pluralismo confessionale*, p. 277.

⁹²⁶ *Coscienza e libertà*, *Rivista annuale curata dalla sezione italiana dell’Associazione Internazionale per la difesa della Libertà Religiosa*, Rome, 2001, p. 107.

⁹²⁷ Long, *Alle origini del pluralismo confessionale*, pp. 278-9.

their heavy-handed interpretation of the laws, which continued for years after, ensured that the position of the Protestant minorities remained unchanged.

In the Constituent Assembly, Mortati argues that the minority religious groups do indeed have equal rights but states that some limitations are necessary:

Attraverso un'interpretazione delle leggi in materia . . . si potrà far valere in pratica la parità dei culti, parità che però non potrà non incontrarsi in certi limiti naturali che derivano dalla situazione di fatto, e che neppure il legislatore può eliminare. Questo si dica, per esempio, nei confronti della proposta, segnalata ai membri della Costituente dal Consiglio delle Chiese evangeliche, con cui chiede di osservare le festività e il riposo festivo non secondo il calendario e le prescrizioni della Chiesa cattolica ma secondo le prescrizioni dei vari culti . . . Evidentemente una norma del genere sarebbe di impossibile applicazione, date le esigenze del coordinamento delle attività lavorative, che implicano la contemporaneità del lavoro.⁹²⁸

Mortati's response to the Evangelical request is perfectly reasonable, but nevertheless raises an important question: why was such a relatively trivial request dealt with in the Assembly when the Council of Evangelical Churches were making continuous demands during this period to have much more fundamental issues, such as their basic freedom to worship and proselytise and their harsh treatment by the authorities, discussed by the Assembly? Such questions were, in fact, being raised by the non-Catholic parties, but were largely ignored by the spokespersons of the Catholic parties.

Mario Cevolotto (Pdl) says that despite the laws on the *culti ammessi* passed as a complement to the Lateran Pacts, the liberty they theoretically afforded the minority religions never in fact existed:

C'è stata una forma di persecuzione, specialmente contro i Valdesi. Badate che io non l'attribuisco affatto, come i Valdesi credono, alla Chiesa cattolica; l'attribuisco all'esecutivo: la polizia, data l'affermazione della superiorità della Chiesa cattolica nel Trattato e nel Concordato lateranense, riteneva di dover considerare in fatto e in diritto deteriori tutte le altre religioni. Ora voi dite sinceramente che, inserendo i Patti lateranensi nella Costituzione, non avete voluto creare uno stato confessionale, né dare una supremazia di azione alla Chiesa cattolica a danno alle altre Chiese, e che volete affermare la libertà di tutti nella forma più ampia e più concreta. Allora, per evitare quelle deformazioni da parte dell'esecutivo che ci sono state in quest'anni, è necessaria un'affermazione la quale tolga ogni dubbio.⁹²⁹

⁹²⁸ CRAC, vol. 1, p. 741.

⁹²⁹ Ibid., p. 838. These comments by Cevolotto are in support of a suggested insertion into draft article 14 of the clause "Tutte le confessioni religiose son eguali davanti alla legge." (Ibid., p. 835.) He first of all makes it clear to the Assembly that his support is not inspired by the arguments of the Waldensians, who were seeking such provisions in the Constitution. He then responds to a comment

(viii) The 'other' minority churches

Federico Alessandrini's *Il Quotidiano* (the main Catholic Action newspaper) is decidedly dismissive of the principle of "eguaglianza di tutte le confessioni religiose di fronte alle leggi" (final article 8, clause 1). It claims that "per lo Stato italiano la verità professata dalla grande maggioranza dei cittadini vale quanto le stravaganze soggettive di alcuni piccoli gruppi."⁹³⁰ Alessandrini's extremely disparaging reference to 'alcuni piccoli gruppi' raises an important question: what exactly did the Assembly understand by the term "other confessions"? Certainly, the Waldensians and the Jews were mentioned in the debates, but what did the *costituenti* know of them? And what was known of the Methodists and the Salvation Army (or 'esercito della salute' as Ruini called them)? How did they figure, if at all, in the minds of the *costituenti* when discussing the concept of the minority churches? Long attempts to clarify the situation:

I soggetti istituzionali noti alla Costituente erano solo due: i 'protestanti' (cioè il Consiglio federale, che li rappresentava unitariamente) e gli ebrei. Sono questi soggetti che intervengono, scrivono, presentano documenti, fanno pressioni; sono loro in fondo, che ottengono ascolto con l'articolo 8 (anche se, in gran parte, esso non corrisponde affatto alle loro richieste). Non si è quindi lontani dal vero nel ritenere che coloro che votarono l'articolo 8 fossero convinti che, a parte il Concordato, sarebbe bastato un paio di intese per chiudere la 'questione religiosa' in Italia: una con i protestanti (visti unitariamente e spesso identificati . . . con i valdesi) e una con gli ebrei. L'entusiastica difesa delle minoranze religiose fatta da Pajetta davanti alla Costituente . . . menzionava appunto i meriti storici dei valdesi e degli ebrei. Altri non ce n'erano, o almeno al tempo della Costituente non erano percepiti come possibili soggetti di intese.⁹³¹

The articles dealing with Church-State relations and the rights and freedoms of the minority churches (final articles 7, 8 and 19) were approved for the final version of the Italian Constitution as follows:

Dossetti had just finished making, in which he had attributed the persecution of the Protestants under Fascism to the police, by making it clear that the responsibility for such activities must lie with the executive; and that if Catholics are sincere in their declarations about not wishing to promote the interests of the Catholic Church to the detriment of the other churches, they will support the clause in question, which will make the executive avoid past injustices.

⁹³⁰ Articolo 15, in *Il Quotidiano*, 15 April 1947, p. 1.

⁹³¹ Long, *Alle origini del pluralismo confessionale*, p. 366. In his footnote to this paragraph, Long says: "I musulmani sono citati per lo più in senso paradossale, per affermare che essi hanno problemi ben diversi da quelli italiani. E, con la perdita delle colonie, non c'era in effetti una 'questione musulmana' in Italia. Quanto ai Testimoni di Geova, erano all'epoca in numero scarsissimo e in fase di riorganizzazione."

Article 7

Lo Stato e la Chiesa cattolica sono, ciascuno nel proprio ordine, indipendenti e sovrani.

I loro rapporti sono regolati dai Patti Lateranensi. Le modificazioni dei Patti, accettate dalle due parti, non richiedono procedimento di revisione costituzionale.

Article 8

Tutte le confessioni religiose sono egualmente libere davanti alla legge.

Le confessioni religiose diverse dalla cattolica hanno diritto di organizzarsi secondo i propri statuti, in quanto non contrastino con l'ordinamento giuridico italiano.

I loro rapporti con lo Stato sono regolati per legge sulla base di intese con le relative rappresentanze.

Article 19

Tutti hanno diritto di professare liberamente la propria fede religiosa in qualsiasi forma, individuale o associata, di farne propaganda e di esercitarne in privato o in pubblico il culto, purché non si tratti di riti contrari al buon costume.

Having discussed the debates surrounding Church/State relations and religious freedom we are now, with varying degrees of assurance, in a position to provide some concluding assessments. The non-specialist reading articles 7, 8 and 19 of the Constitution in their final form could be forgiven for assuming that the debates on these articles would have taken up a roughly equal amount of time and energy leading to their approval; but this is far from having been the case. What we now know is that articles 8 and 19 were dependent for their existence and content on the outcome of what turned out to be the most difficult and contentious issue, resolved in article 7, concerning the inclusion of the Lateran Pacts in the Constitution. Once this issue was decided, articles 8 and 19 were inserted largely to meet objections which had already been widely discussed in the debates on article 7.

We are also in a better position to understand the sense of the articles, precisely in relation to the problems created by article 7. Without rehearsing these arguments, it is evident that proposals by Togliatti, Cevolotto and other *laici* could easily have guaranteed religious freedom for all faiths in a single article, but this became impossible because of the Catholic insistence on the inclusion of the Pacts, and the privileges this established for the Catholic Church. In this respect, articles 8 and 19 can be seen as attempts to modify this imbalance.

At this point, reference to the *conclusioni cattoliche* may help to shed some light on the problem. What emerges with some clarity from a reading of the debates is that the arguments of the Catholics were a mixture of responses, namely to demands for complete freedom of conscience by the *laici* in the new political situation on the one hand, but almost totally conditioned by the need to defend the ICAS proposals on the other. In this sense we can say that a certain prioritisation was given by the Catholic *costituenti* to the different components of the ICAS document.

There was total fidelity to the fourth, and clearest, demand in the *conclusioni* for insertion of the Pacts into the Constitution, with the exception of Gerardo Bruni, the *cristiano-sociali* leader who both spoke and voted against it. Catholic intransigence and almost total imperviousness to both sound juridical arguments against inclusion, and repeated assurances that no-one would oppose the existence of the Pacts outside the Constitution demonstrates that they did not treat the *conclusioni* as a simple wish list. Articles from authoritative sources, and in all likelihood through other Catholic channels, made it clear that inclusion of the Pacts was a Vatican priority, and that it was the duty of Catholics to support it. That the *conclusioni cattoliche* was not an official document would have made little difference to most Catholics.

The third demand in the *conclusioni* was also defended with some rigour. While all religious faiths were to enjoy equal freedom, this did not entail ‘equiparazione’, or identical treatment. Leaving aside the ambiguity of meaning, article 8, with its statements about “le confessioni religiose diverse dalla cattolica” having to be reconciled with Italian law both implies that the Catholic religion is exempt from such an obligation and also subjects them to existing legislation. Their relationship with state legislation, on the basis of ‘intese’, is consigned to future arrangements. It was clear from Catholic arguments that the subordination implied in the article was intended. This was buttressed by arguments appealing to the second demand in the *conclusioni*, namely that state legislation should reflect the historical, numerical and cultural predominance of Catholicism in the Italian nation. The appeal to the importance of maintaining the *pace religiosa*, although appearing in the *conclusioni* as part of the argument against ‘equiparazione’, was employed more frequently and vigorously in connection with the inclusion of the Pacts into the Constitution.

The ICAS document, in its first demand, would have led, if successful, to a separate statement in the Constitution about the special place of the Catholic Church

in the nation. It added that failure to include such a statement would amount to an offence against the Italian sentiment and conscience. The demand was from the beginning a total failure, with no hope of success as a proposal, although the idea of offending the Italian (Catholic) conscience became yet another argument for inclusion of the Pacts. Aside from a few integralists in the Assembly, from the important Dc members from Subcommittee 1, only Giorgio La Pira was favourable to such a statement, and no draft article to this effect was proposed by the Assembly. La Pira, moreover, with his invocations to the Virgin Mary and appeals to the theories of St. Thomas Aquinas during the debates, was renowned for his piety and devotion, and his interventions, although somewhat irritating, usually met with a mixture of affectionate opposition and respect.⁹³² Was this reticence to draft an article for such a statement an indication of a greater degree of *laicità* among the Dc *costituenti* than among the broader membership of the Ac?

It is doubtful whether this in itself can support such a supposition. In the first place we have to remember that in numerical terms within the Assembly the 'lay' parties easily outnumbered the Dc. The general tenor and tone of the discussions could not be dictated by Catholics alone. In reading the debates one is struck by what could almost be called the 'cranky' nature of the few speeches in favour of an invocation such as that demanded by the first request of the *conclusioni*. But there is a factor which is perhaps even more important in explaining the apparently lukewarm Dc response to this demand. From the beginning of the debates on Church/State relations in Subcommittee 1, both Dossetti and Moro had insisted, in response to Togliatti, that their proposals were not 'ideological' in nature. Subsequently, so much Catholic effort had gone into arguing that inclusion of the Lateran Pacts did not amount to the creation of a confessional state, and to minimising the importance of the Pacts' inclusion of Article 1 of the Albertine Statute, that they could hardly then propose an article that would undercut their arguments. The substance of the demands of the ICAS document had been obtained after an extremely bruising battle. To rub salt into the wound of the defeated after such a substantial victory by the solemn invocation of Catholic hegemony demanded by the *conclusioni cattoliche* would have caused an eruption that even Togliatti could not have prevented.

⁹³² I have been unable to find a reliable source for the nevertheless characteristic story that while Mayor of Florence in the 1950's La Pira had to borrow an overcoat for a winter visit to the USA because he had given his own to the poor.

We have already indicated that the role of Togliatti in the debates was critical. The crucial vote, on article 7, which would determine the subsequent elaboration of articles 8 and 19, took place on the 25th March 1947. At this point, although De Gasperi had visited the United States, and some may have suspected pressure from the State Department to exclude Communists and Socialists from government, these suspicions were not yet as well-formed as later historiography has read into them. It is in some ways tempting to speculate whether or not De Gasperi had deliberately held back his exclusion of the Communists and Socialists from government until April/May 1947 by which time the vote in favour of inclusion of the Pacts had been secured.

Those voting in favour of inclusion of the Pacts amounted to 350, those against 149. Although there were 8 abstentions and 1 recorded absence, Communist discipline was legendary and Togliatti delivered 94 votes for inclusion.⁹³³ If Togliatti had decided otherwise, he would undoubtedly have taken the abstentions with him and probably have defeated article 7.⁹³⁴ To the reasons already argued for Togliatti's decision we should add that at this stage the Pci was still part of the government coalition. His long-term aim, moreover, was the construction of a Gramscian 'historic bloc' which would itself determine, and not be determined by, the direction of government irrespective of the party (or parties) in office. An essential component of this 'historic bloc' was the Catholic masses. To Togliatti, this was in the long-term more important than the compromises over article 7, and, it must be said, those over articles 8 and 19.

Some may well think that in the overall scheme of post-war Italian history Togliatti was right. But in case we are tempted to think, like Togliatti, that the debates we have discussed were conducted largely on the basis of a fear that Church/State relations and issues of religious freedom might in future have a greater importance than they turned out to have in practice, we need to give a little attention to a small chapter of Italian history which has received little attention, to show that for some Italian citizens of the Republic this was not the case. The debates did not amount to discussions of abstract principles with no consequences.

⁹³³ These calculations are based on the recorded votes in CRAC, vol. 1, pp. 662-4.

⁹³⁴ 'Probably' to allow for abstentions in the other direction; although this is unlikely, given that his difficulty was in persuading his party to vote for, not against, inclusion.

SECTION C: CONCLUSIONS

THE AFTERMATH OF THE CONSTITUTION

Having established in Section B that the Catholic Church and Dc party largely had their own way with regard to Church/State relations in the new Constitution, in this concluding section we will discuss the consequences of this victory for the minority religious groups and indeed the Catholic Church itself. We shall also discuss the juridical repercussions of article 7 of the Constitution, before examining how these factors affected the condition of both Catholic and non-Catholic denominations in the immediate aftermath of the Constitution.

(i) A New Democracy?

The horrors of the war years in Italy and the social deprivations and political uncertainties of the period immediately after the war had instilled in Catholics the conviction that the Church was “a bastion of truth in a hostile world.”⁹³⁵ Political and ecclesiastical integralists also believed that given this perception, the laity was duty bound “to unite in defence of the Church and to accept the directives provided by their spiritual leaders.”⁹³⁶ The authority of the Catholic ecclesiastical hierarchy was thus strengthened by the war years and manifested itself post-war in the willingness of the faithful to follow the instructions of the clergy to the letter. I would have to agree with Conway when he claims that to a large extent this explains the electoral success enjoyed by the Christian Democrats in Italy and indeed Christian democrat parties in much of Western Europe during the post-war years.⁹³⁷

However, in the institutional elections of 1946, despite the backing of the Church and canvassing by the Pope, only a relative majority was achieved by the Dc party. This meant it had to tread carefully, as the potential of a combined vote by the Left, meant that any thoughts of pushing through a ‘Catholic agenda’ unchallenged was quite unfeasible. As Furlong points out

The Communists . . . favoured a Constitution which would be clearly committed to specific radical egalitarian values and which should leave their implementation to a political system dominated by a single chamber legislature. The temporary continuation of Liberal and Fascist norms, particularly the Penal Code and the Code of Penal Procedure, was accepted only as the means of ensuring a peaceful and stable transitional period. To the

⁹³⁵ Conway, *Catholic Politics in Europe*, p. 92.

⁹³⁶ Ibid.

⁹³⁷ Ibid., pp. 92-3.

legislature should fall the task of guaranteeing the progressive implementation of the Constitution and the transformation of Italian politics into a radical democratic participatory system.⁹³⁸

That neither of these two last points occurred can be attributed to two main developments: a ruling Dc party from 1948 onwards which displayed an inevitable reticence, or even inertia, at every opportunity for reform; and a Constitution considered by many to be 'rigid', and a sound basis for legal, political and institutional reform, which turned out in practice to be extremely 'flexible' and open to abuse by a judiciary, still populated by personnel formed under Fascism and who preferred to continue to give precedence to the old Fascist laws even if they contravened articles of the Constitution, and ignored by a government equally keen to prolong the *status quo*. The problem was compounded by the fact that

Italian Public Administration in its widest sense ought to be seen as a major direct influence on public policy. It is not only that the state apparatus is not under effective political control but rather that the capacity of directing public administration does not lie with the legislature, the Council of Ministers, the Prime Minister or any other formal political body.⁹³⁹

Furlong claims that the process of post-war reconstruction passed on to future governments an awkward compromise between the old mainly pre-Fascist institutions of state, the radical idealist hopes of the Constituent Assembly, and the internal domestic constraints on freedom of action for the new political classes.⁹⁴⁰

Apart from this 'awkward compromise', a unique set of opposing forces were tugging at the new Italian democracy: on one side the dream of a revolution, while on the other

l'idea di un ordine oggettivo di verità e di giustizia introducono nella rinascenza democrazia italiana forti tensioni utopiche che danno calore alla vita politica e creano forti motivi di appartenenza e di mobilitazione, ma rendono anche più difficile e incerto il funzionamento dei meccanismi della democrazia.⁹⁴¹

Jemolo interpreted later developments in France and the advent of De Gaulle as a defeat for democracy which, he believed, made it all the more likely that in Italy an

⁹³⁸ Furlong, *Modern Italy*, p. 67.

⁹³⁹ Ibid., p. 78.

⁹⁴⁰ Ibid., p. 53.

⁹⁴¹ Scoppola, *La repubblica dei partiti*, pp. 28-9. The question of what is meant by 'democracy' as it was seen by the Christian democrat party and the Vatican is dealt with in depth in P. Scoppola, *La democrazia nel pensiero cattolico del Novecento*, in *Storia delle idee politiche economiche e sociali*, diretta da L. Firpo, vol. VI, Torino, Utet, 1972.

authoritarian regime, though perhaps not a repetition of Fascism, might emerge. He felt that it would not, however, display the organised violence that was the signature and success of Fascism, but an authoritarian regime nevertheless, which, appearing to have an air of legality, would bypass the Constitution without reforming it.⁹⁴²

Jemolo's assessment of the new regime was echoed by the lay parties. The Communist leader, Palmiro Togliatti, in a talk on Giolitti given in Turin on 30th April 1950, referred to the expulsion of the Communists from government, and suggested a continuity between Fascism and post-Fascism, which reads as a harsh criticism of the politics of the Dc government:

sembrava che il regime mussoliniano fosse stato travolta per sempre . . . Ebbene a distanza di sette anni da quel crollo, tutti coloro che hanno sensi di libertà sono esterrefatti a vedere come la minaccia di un ritorno ad un regime di tirannide e di corruzione, simile, anche se non del tutto uguale, a quello fascista, gravi su noi come un incubo.⁹⁴³

During the autumn conference season of 1952, both the Italian Liberal Party and Social Democratic party, in their congresses in Genoa, passed motions criticising the government for the numerous violations of Articles 8, 17, 18 and 19 of the Constitution and calling for a complete revision of the "anticostituzionali leggi fasciste [which are] la causa degli inconvenienti lamentati."⁹⁴⁴ The progressive lay parties looked at the bigger picture: from their point of view, "gli anni della Costituente erano . . . anni di caduta delle speranze di una democrazia nuova."⁹⁴⁵

In an attempt to identify the type of government that Italy had developed from the 1940's, Gianni Long suggests three options:

È nota ai costituzionalisti la distinzione . . . tra forme di governo: monopartitismo, multipartitismo moderato e multipartitismo estremo. Applicando questa schema alla recente storia dei rapporti tra Stato e confessioni religiose in Italia, possiamo parlare di 'monoconfessionalismo' dei Patti del 1929, protrattosi di fatto sino agli anni settanta e di diritto sino all'approvazione della prima legge sulla base di intesa nel 1984.⁹⁴⁶

This is but a small selection from the historiography of the post-war Italy which is unanimous in its criticisms of the tardiness with which post-war governments

⁹⁴² A.C. Jemolo, *Church and State in Italy from unification to the present day*, Torino, Einaudi, 1977, p. 339.

⁹⁴³ Cited in Scoppola, *La repubblica dei partiti*, p. 161. See also P. Scoppola, *Gli anni della Costituente fra politica e storia*, Bologna, Il Mulino, 1980, pp. 25-6.

⁹⁴⁴ Falzone, *La Costituzione ed i culti non cattolici*, p. 70.

⁹⁴⁵ Scoppola, *Gli anni della Costituente*, p. 28.

⁹⁴⁶ Long, *Alle origini del pluralismo confessionale*, p. 367.

attended to the problems of bringing legislation into line with the requirements of the Constitution.

More particularly, in relation to the debates we have examined, Catholics had given repeated assurances that any residual problems related to the freedom of minority faiths created by the inclusion of the Lateran Pacts in the Constitution would be speedily resolved.

(ii) An effective Constitution?

With regard to article 7 of the Constitution, Falzone says, I think incorrectly, that even after the Constitution came into force, “le norme del Trattato e del Concordato conservano il valore di norme di legge ordinaria, che avevano prima” and so in spite of the great weight placed on the insertion of the Pacts into the Constitution by the Catholic *costituenti*, the Catholic press and the ecclesiastical hierarchy, legally the status of the Pacts appears to have been the same as when they did not form part of a constitution.⁹⁴⁷

However, when the minority religions are factored in the picture becomes less clear:

l'articolo 81 dello statuto albertino, almeno, disponeva che ‘ogni legge contraria al presente statuto è abrogata’ . . . La Costituzione non ha un preambolo che dica di che cosa si tratti. La lacunosa XVI disposizione transitoria ordina la revisione e il coordinamento con la Costituzione, da operarsi entro un anno, delle ‘precedenti leggi costituzionali che non siano finora esplicitamente o implicitamente abrogate’, ma nulla dice circa la revisione delle norme di leggi ordinarie anteriori che siano in contrasto con norme della Costituzione. Possono considerarsi anche queste, quasi tutte appartenenti alla legislazione fascista, ‘esplicitamente o implicitamente abrogate’? La formula di promulgazione, non approvata dall’Assemblea Costituente ma apposta dal Presidente della Repubblica, precisa che ‘La Costituzione, munita del sigillo dello Stato, sarà inserita nella Raccolta ufficiale delle leggi e dei decreti della Repubblica’, e che essa ‘dovrà essere fedelmente osservata come *legge fondamentale* della Repubblica da tutti i cittadini e dagli organi dello Stato’.⁹⁴⁸

Whether or not the Constitution did indeed have the status of a ‘legge fondamentale’ is open to doubt, due to three different theories, prevalent in the 1940’s and 50’s, of the juridical status of constitutions.⁹⁴⁹

⁹⁴⁷ Falzone, *La Costituzione ed i culti non cattolici*, p. 24.

⁹⁴⁸ Ibid., p. 46.

⁹⁴⁹ “La prima, detta della *legge fondamentale*, pone una graduatoria degli atti giuridici per la quale i contratti, i regolamenti, i provvedimenti alle autorità locali, ecc., non hanno un valore proprio: hanno valore in quanto lo traggono dalle leggi ordinarie; e queste ultime valgono in quanto traggono la loro

However, the main point to remember here is that the Constituent Assembly had had the opportunity to resolve all of these issues but failed to do so. Indeed, the solution was abandoned to the free interpretation of the judiciary, resulting in decisions at best unsafe, and at worst completely contradictory.⁹⁵⁰ This, according to Falzone, is the main reason for the Constitution being progressively discredited in the eyes of the public, to the extent that during the 1950's, he claims that there was much confusion as to which parts of the Constitution were still in force.⁹⁵¹

It has to be said, however, that a reading of the debates of the Constituent Assembly does not suggest that there was any doubt in the mind of the *costituenti* that they were deliberating a Constitution of the strongest kind, one from which the legislative framework of the Republic drew its legitimacy. From this point of view Falzone, who was not a member of the Assembly, presents an idiosyncratic scenario of the status of the Constitution as problematic. In many ways Falzone's work seems to be presenting views of the Constitution which emerged as justifications for not implementing some of its provisions.

(iii) The response of the confessions

a) The Catholic Church

The political, spiritual and financial stability of the Vatican had been guaranteed by the insertion of the Lateran Pacts in the Constitution. In return the Catholic Church mobilised Italian Catholics behind the Dc party, as has been shown, in an alliance that appeared unshakeable:

La maggior parte degli ambienti ecclesiastici interpretò infatti in chiave più confessionale di Montini il legame fra Chiesa e partito, dando vita a ciò che Jemolo ha definito il 'regime clericale' e di cui uno dei tratti più caratteristici fu la limitazione della libertà delle minoranze protestanti.⁹⁵²

efficacia dalla Costituzione; sicché, trattandosi di una vera e propria gerarchia di norme, la Costituzione è cogente solo nei riguardi del legislatore e non contiene obblighi o divieti direttamente rivolti ai cittadini e agli organi esecutivi dello Stato. Per la seconda teoria, invece, le costituzioni sono leggi, sia pure su un piano morale e politico più elevato (teoria della *superlegge*), sicché la loro promulgazione ne rende senz'altro obbligatori l'esecuzione e il rispetto da parte di tutti, con la conseguente abrogazione di tutte le precedenti norme legislative con esse contrastanti. Per la terza teoria (detta *mista*) le costituzioni sono complessi di norme, di cui talune dirette soltanto al legislatore, affinché ad esse uniformi le sue leggi, altre dispositive e quindi direttamente rivolte ai cittadini e agli organi esecutivi; altre costruttive, cioè dirette a istituire i massimi organi dello Stato prevedendone e regolandone armonicamente le competenze." Ibid., pp. 46-7.

⁹⁵⁰ See *ibid.*, pp. 50-54 for examples of such judgements.

⁹⁵¹ *Ibid.*, pp. 46-7.

⁹⁵² Giovagnoli, *Il partito italiano*, p. 32.

Although the ecclesiastical hierarchy was on the whole rather pleased with the inclusion of the Lateran Pacts in the Constitution, which was perceived as by far the most important issue for the future of the Catholic Church during the period of the Constituent Assembly, it was also concerned about the freedoms afforded to the minority religions by articles 8, 19 and 20. This concern was reflected primarily in the Catholic press: the Vatican's official newspaper, *L'Osservatore Romano* was constantly criticising the activities of these minorities throughout the period of the Constituent Assembly and beyond. In an article published on 28th October 1956, almost ten years after the Constitution came into force, it reported that "the Catholic Press has not failed to utter . . . doubts and perplexities" in response to Protestant attempts to push forward negotiations with the government on the basis of 'intese' as laid down by clause 3 of Article 8 of the Constitution.⁹⁵³

Catholic concern over these new freedoms being handed to the Protestants was widespread. The Catholic press was going out of its way to convince its readership that the old laws were still in force – in some instances inventing its own laws on the subject. The following is a section of an article from a Bologna magazine:

Let Catholics remember the following laws which govern Protestant propaganda work in Italy: a) For the spread of printed propaganda of any kind, a written authority (*sic*) must be obtained from the proper local police authority: it is not enough to have an over-all permit issued by an Italian police authority. b) The organisers of public meetings must make written application to the proper police authority, who must give an answer in writing within three days. c) For services behind closed doors where there is a qualified person present – minister, elder or lay preacher – there must be regular permission. Adherents may meet freely for prayer together. d) Precedence will be given to Catholics if they submit their requests for public meetings in good time to the requisite authority.⁹⁵⁴

⁹⁵³ Peyrot, *Religious liberty and conditions of Evangelical People in Italy*, p. 23.

⁹⁵⁴ Ibid., pp. 29-30. The quotation comes from an article by Paolo Celli, *The Protestant Peril – Protestants and the Italian Law*, in *Il Regno*, published in Bologna, April 1957, p.12. The text of item d) apparently referring to legislation which should be imposed on the Protestants, appears nowhere in Italian law and had previously been fabricated and promulgated by Don Amedeo Ghetti, Diocesan Secretary for the Preservation of the Faith in the diocese of Bologna, in another article entitled *The Protestant Peril*, published in Bologna in the Catholic Action newspaper, *L'Avvenire d'Italia* on January 4th 1957.

b) *The Protestant churches*

Examining the problems that faced the non-Catholic denominations in their attempts to reach agreement with the State regarding their Constitutional and juridical position as laid down in clause 3 of Article 8 of the Constitution, Falzone says that the first to make direct approaches to the government were the Pentecostals. On 12th October 1948, they put forward a request to the Ministry of the Interior aimed at obtaining legal recognition for their organisation under the terms of the law of the 24th June 1929. This request was never given a reply.⁹⁵⁵

The *Chiesa valdese* fared little better. In September 1948 it set up a commission of five members entrusted with the task of reaching agreement with the Italian State on behalf of all churches of the evangelical community. On 20th March 1951, the commission issued a communiqué, reproduced in *Il Diritto ecclesiastico* (1951, p. 684) indicating that “gravi difficoltà si frappongono tuttora alla realizzazione di quelle intese da concordarsi tra lo Stato e i culti diversi dal cattolico . . . Il Governo, infatti, non ha ancora dimostrato di volere attuare le intese predette secondo le modalità previste dalla Costituzione.”⁹⁵⁶

In December 1951, the deputies Castellarin and Preti put a series of questions to the Minister for the Interior. On 12th of that month Deputy Bubbio, Undersecretary of State for the Interior, replied to the Chamber remarking that

si tratta di attuare riforme delle leggi vigenti (del 1929-30) per metterle in armonia con le norme della Costituzione. In tal senso fin dallo scorso anno intervennero accordi con il presidente del Consiglio federale delle chiese evangeliche d'Italia, precisamente nel senso che il Consiglio avrebbe iniziato lo studio delle possibili riforme e avrebbe presentato concrete proposte al Ministero dell'interno, il quale le avrebbe fatte oggetto di esame e avrebbe promosso le necessarie intese e, quindi, il provvedimento legislativo. Si è in attesa di tali proposte per un esame della materia.⁹⁵⁷

Preti was less than satisfied with this reply “anche perché la realtà è diversa da quella esposta.”⁹⁵⁸ Preti complained that the Ministry was playing with words and deliberately employing delaying tactics to avoid tackling the issue.

In his reply Bubbio continues to prevaricate on the meaning of the word ‘intese’:

⁹⁵⁵ Falzone, *La Costituzione ed i culti non cattolici*, p. 70.

⁹⁵⁶ Ibid., p. 71.

⁹⁵⁷ Ibid., p. 71-2.

⁹⁵⁸ Ibid., p. 72.

gli evangelici desiderano la forma del concordato, trattandosi di accordi tra ordinamenti giuridici; il Ministero dell'interno . . . ritiene invece che il termine generico 'intesa' non consenta una siffatta 'specificità precisa portata', la quale 'importerebbe un parallelismo tra il concordato con la Santa Sede e le intese con le rappresentanze delle confessioni religiose diverse dalla cattolica, che non è giuridicamente ammissibile'.⁹⁵⁹

The *Consiglio federale delle chiese evangeliche* proposed that a commission be set up comprising the proper representatives of the State and of the religious organisations affected by the issue and indicated the following areas which should form the basis of any discussions:

posizione giuridica degli enti di culto e delle istituzioni religiose; posizione giuridica delle associazioni religiose esistenti solo di fatto; precisazioni in ordine alla libertà di discussione e di testimonianza; istruzione religiosa nelle pubbliche scuole; tutela dell'esercizio del culto pubblico e della sua diffusione; tutela delle libertà dell'esercizio privato e pubblico, individuale ed associato, del culto e delle associazioni ed attività di carattere religioso; posizione giuridica dei ministri del culto; disciplina del matrimonio religioso; posizione giuridica dei templi e dei locali di culto assistenza religiosa negli ospedali, negli istituti di cura e nelle case di prevenzione e di pena; assistenza religiosa ai militari; rapporti fra enti di culto ed enti di beneficenza ed istruzione e relative rappresentanze; disciplina dei cimiteri.⁹⁶⁰

Paolo Barile contributed to this discussion with an article in *Il Diritto ecclesiastico*, 1952, p.342, in which he added other suggestions for discussion: "estensione alle chiese non cattoliche dei limiti di valore in tema di autorizzazione agli acquisti; soppressione delle limitazioni al contributo dello Stato nelle riparazioni e ricostruzioni degli edifici dei culti acattolici."⁹⁶¹

Falzone points out that

i costituenti, nel 1947, erano convinti di avere già provveduto essi stessi ad assicurare in Italia l'eguaglianza delle confessioni religiose di fronte alla legge e la libertà religiosa, con gli articoli 8 e 19 della Costituzione. Non potevano immaginare che, cinque anni dopo, fosse ancora materia di discussione, e non di rado negata, l'applicabilità di questi articoli (dalla negazione dell'applicabilità discende che la delicata materia sarebbe tuttora regolata dalla legislazione fascista); e nemmeno che vi sarebbero state difficoltà nella realizzazione di intese e di leggi esplicative delle norme costituzionali.⁹⁶²

⁹⁵⁹ Ibid.

⁹⁶⁰ Ibid., p. 73.

⁹⁶¹ Ibid.

⁹⁶² Ibid., p. 74.

From this come two points: why, when there were so many jurists in the Constituent Assembly, especially among the ranks of the Dc party, was the Constitution allowed to remain so open-ended, with no fixed timescale nor framework for translating its principles into laws? Secondly, were the Dc party jurists, bolstered by their unofficial, but skilfully manipulated, status as the party of the Church, responsible for allowing this to happen?

Falzone criticises the Protestant groups for irritating the government by its persistent badgering. He asks: “Non si sono mai chiesti se bussano alla porta giusta, a parte il fatto che si sono ostinati a bussare ad una porta che non sembra volersi aprire del tutto?”⁹⁶³ The Constitution, he says, talks of negotiations with the State, not the Government, but how can one have negotiations with a State without going through the Government that represents it? A debate in Parliament, he says, has more chance of enthusing public opinion and the press, but how can that happen when the government refuses to allow even the suggestion of such a debate? He offers the following advice to the Protestant churches:

Gli evangelici, se veramente desiderano una nuova legge, raccolgano i loro studi in un progetto di legge ben articolato e contenente norme di evidente equità; lo facciano presentare, ad esempio alla Camera, da uno o più deputati (laici o anche cattolici) di maggioranza o di paramaggioranza; si assicurino la collaborazione di almeno un deputato per ciascuna delle due opposizioni, affinché egli induca i suoi colleghi di gruppo a non intervenire se non a fine costruttivo, cioè lasciando da parte il più possibile la politica; il che significa astenersi da ogni considerazione o affermazione che possano essere interpretate come aventi sapore demagogico (mai parlare, ad esempio, di ‘persecuzione’ o cose simili). Può darsi che i presentatori della proposta di legge incontrino qualche difficoltà a farla discutere rapidamente prima in Commissione poi in aula; ma se essi non si stancano di insistere e non lesinano i rispettosì appelli al Presidente, finiranno col far mettere in moto il convoglio del procedimento legislativo fino all’approvazione della legge. Eguale sistema occorrerà seguire poi al Senato. Il testo della legge, assai probabilmente, sarà stato modificato durante la discussione: ma dovrà pur sempre essere conforme alla Costituzione e renderne operanti gli articoli 8, 19 e 20. In ogni caso, la nuova legge segnerà un progresso rispetto alla legislazione del 1929-30.⁹⁶⁴

He goes on to list possible pitfalls and suggest possible escape routes on the rocky road to creating legislation and then widens the debate out onto the European perspective. He quotes article 9 of the International Convention on Human Rights,

⁹⁶³ Ibid.

⁹⁶⁴ Ibid., p. 75.

signed in Rome on November 4th 1950, as an example of even more pressure on the Italian State to resolve the problem of the minority religions. It states:

Ogni uomo ha diritto alla libertà di pensiero, di coscienza e di religione; questo diritto implica la libertà di cambiare di religione o di convinzione, e così pure la libertà di manifestare la sua religione o la sua convinzione individualmente o collettivamente, in pubblico o in privato, per il culto, l'insegnamento, le pratiche e l'esecuzione dei riti. La libertà di manifestare la propria religione o la propria convinzione non può formare oggetto di altre restrizioni che quelle, previste dalla legge, costituenti misure necessarie, in una società democratica, alla sicurezza pubblica, alla protezione dell'ordine, della salute o della morale pubbliche, o alla protezione dei diritti e libertà altrui.⁹⁶⁵

Article 10 ensures freedom of expression and article 11, freedom of congregation and association. He sums up by obliquely suggesting that they should be satisfied with all of these proclamations.

Anche il diritto europeo, in atto o nascente, dunque, assicura la piena libertà di culto (compresa la propaganda e il cambiare di fede) nei paesi aderenti, tra cui l'Italia. Nessun dubbio, ormai, che l'intolleranza religiosa sia esclusa in Italia, dal diritto interno e da quello internazionale. Non si vuole qui discutere se in Italia la situazione di fatto sia conforme al diritto. Se così non fosse, qual beneficio ne verrebbe allo Stato italiano o alla Chiesa cattolica? L'intolleranza inasprisce gli animi, fornisce occasioni al vittimismo e spunti alla demagogia; irrita i laici e i cattolici liberali, che non sono affatto pochi; porge motivo a rilievi in sede internazionale; offre il destro a rappresaglie, nei paesi di religione prevalentemente non cattolica, contro la libertà religiosa dei cattolici; ossia crea ostacoli alla missione nel mondo della Chiesa cattolica. Non per nulla, cattolico significa universale.⁹⁶⁶

In January 1955, the authorities of the Protestant Churches in Italy wrote to the State highlighting their situation under the regulations governing religious liberty as follows:

1. The Ministry of the Interior is clearly unwilling to accept the new import given by the Constitution to the question of religious liberty. It still retains firm and unaltered the legislation of 1929/30 on the subject of "recognised religious bodies" (Culti Ammessi). It still has to express its willingness to enter into discussions with a view to reaching the agreements referred to in article 8 of the Constitution.
2. Consequently restrictions continue to be imposed by both the central and the local police on the activities of Protestant groups, which turn out to be

⁹⁶⁵ Cited in *ibid.*, p. 77.

⁹⁶⁶ *Ibid.*, p. 78. Falzone's position seems to change from an initial open sympathy for the demands of the minority religions to one inspired by caution in response to irritation caused by these demands.

quite *ultra vires*, and penal charges are laid against ministers of religion in respect of actions which do not constitute legal offences.

3. Although the various cases resulting have terminated in many instances in full acquittal, the Ministry of the Interior and the local authorities have shown no sign of willingness to accept these verdicts, even those of the Court of Cassation, giving in this way an example of disrespect for the Constitution and the Courts.⁹⁶⁷

(iv) The problem of unifying the legal system with the Constitution

As has been shown, the main problem faced by the minority religions was the lack of co-ordination between court rulings, which by and large ended in decisions based on the old freedom of religion laws (i.e. the *culti ammessi* laws) that were still in force at the time, and the terms of the new Constitution. Adams and Barile point out that the Albertine Statute of 1848 was susceptible to amendment by ordinary legislative enactment, whereas the Republican Constitution of 1948 was of the type jurists call 'rigid' and according to which "laws are invalid if, in the opinion of a judicial authority, they conflict with the Constitution and the Constitution cannot be amended by ordinary legislation."⁹⁶⁸

A state of inertia existed in the magistrature regarding the application and interpretation of laws of all kinds in relation to the Constitution. This was particularly problematical in cases brought by and against the religious minorities, where a kind of legal stalemate operated in the many attempts by the judiciary to reconcile articles 8 and 19 of the Constitution with its article 7 and the laws dealing with the permitted religions. And compounding the problem of whether the Constitution had the status of *legge fondamentale* (discussed earlier), was the problem of interpretation of the concepts of *norme precettive* and *norme programmatiche*. Galante Garrone explains the difficulty:

all'indomani stesso dell'entrata in vigore della Costituzione, ebbe largo corso (specialmente ad opera della Corte di Cassazione, il supremo organo giudicante) la distinzione fra *norme precettive* e *norme programmatiche*. Le prime, si disse, sanciscono veri e propri diritti, pongono limiti al potere legislativo e divieti alle autorità pubbliche; le seconde enunciano soltanto dei principî generali, e contengono – più che precetti e comandi – orientamenti,

⁹⁶⁷ Taken from "Religious liberty and the condition of Protestants in Italy", a memorandum approved by the Federal Council of Churches, Jan. 17th 1955, and sent to the Government, members of Parliament and the headquarters of the political parties. Rome, Ferraiolo: 1955, pp. 9-10; cited in Peyrot, *Religious liberty and conditions of Evangelical People in Italy*, pp. 5-6.

⁹⁶⁸ J.C. Adams, & P. Barile, *The Government of Republican Italy*, London, George Allen & Unwin, 1961, p. 53.

direttive, programmi. Ciò premesso, la tendenza che si profilò fu di riconoscere un vero e proprio valore giuridico alle prime, negandolo alle seconde, e nello stesso tempo di annoverare tra le seconde il maggior numero possibile di articoli della Costituzione. Con ciò si giunse a svuotare di contenuto molte norme costituzionali, a escluderne qualsiasi incidenza sul nostro attuale ordinamento giuridico. (E le cose si vennero ancor più complicando in quanto, nella prima categoria, si vollero ancora distinguere le norme precettive *a esecuzione immediata*, e cioè senz'altro operanti ed efficaci, dalle norme precettive *a esecuzione differite*: un ulteriore modo per ridurre la diretta influenza della Costituzione. Possiamo ammettere che a questo orientamento la Corte di Cassazione fosse anche indotta da preoccupazioni di carattere tecnico; e cioè dal timore di scardinare il sistema delle leggi in vigore, di creare dei pericolosi 'vuoti legislativi'.⁹⁶⁹

To clarify the status of ordinary laws in relation to these *norme* of the Constitution, he says

una legge è da riconoscersi e dichiararsi costituzionalmente illegittima non solo quando sia contraria a un tassativo precetto (*norma precettiva*) della Costituzione, ma anche quando sia contraria a un principio generale, un orientamento, un indirizzo (*norma programmatica*) della Costituzione stessa.⁹⁷⁰

Once the Constitutional Court had begun passing sentences the conceptual gap between *norme precettive* and *norme programmatiche* became less distinct and some new and even existing laws, considered contrary to *norme programmatiche* were either not passed or, if already in force, abrogated.⁹⁷¹ However, even the process of abrogation was far from straightforward:

La Corte può essere investita della questione soltanto se, nel corso di un processo civile o penale o amministrativo, venuta in discussione una legge da applicare al caso concreto, qualcuna delle parti in giudizio sollevi la questione della sua 'incostituzionalità'; e il giudice, ritenuta la questione 'non manifestatamente infondata', sospenda il giudizio e rimetta la questione stessa alla Corte costituzionale. Inoltre il giudice stesso può, di sua iniziativa (anche quando le parti non gliene abbiano fatto richiesta, ma egli abbia un dubbio sulla costituzionalità di una legge che dovrebbe applicare) rimettere la decisione alla Corte.⁹⁷²

Galante Garrone points out that this system has one fundamental weakness: if a court case does not come up that directly relates to a particular law considered

⁹⁶⁹ A. Galante Garrone, *Questa Nostra Repubblica*, Torino, Loescher, 1982, pp. 24-5.

⁹⁷⁰ Galante Garrone, *Questa Nostra Repubblica*, p. 202.

⁹⁷¹ Ibid., p. 25.

⁹⁷² Ibid., p. 202.

‘unconstitutional’ according to the *norme precettive/programmatiche* doctrine, that law could remain on the statute book for years or even decades.⁹⁷³

(v) Religious freedom: the reality

a) The condition of the Protestants post-Constitution

Falzone, steering clear of the political arguments which he says only serve to make the exchanges more bitter and less objective, concentrates on the juridical debate.

The Constitution had only just come into force when on 3rd April 1948 padre Cavalli S.J., in an unequivocal summary of the Catholic Church’s view of the Protestants in the post-Constitution period, wrote in *La Civiltà cattolica* that

i protestanti partono dal diritto alla libertà, i cattolici dal diritto della verità. Che, in caso di conflitto tra questi due principî, almeno in linea teorica, la supremazia spetta alla verità, neppure i protestanti negheranno . . . La Chiesa cattolica, convinta, per le sue divine prerogative, di essere l’unica vera Chiesa, deve reclamare per sé sola il diritto alla libertà, perchè alla verità, non mai all’errore, questa può competere. Quanto alle altre religioni, essa non impugnerà la scimitarra, ma domanderà che, con mezzi legittimi e degni della persona umana, non sia loro consentito di difendere false dottrine. Per conseguenza, in uno Stato in cui la maggioranza è cattolica, la Chiesa chiederà che alle altre chiese non sia data un’esistenza legale e che, se esisteranno minoranze di religione diversa, queste abbiano soltanto un’esistenza di fatto senza la possibilità di divulgare le loro credenze.⁹⁷⁴

Although such thinking was no doubt behind the arguments of many Catholics at the *costituente*, none of them had dared to come out so openly with such an explicitly integralist statement, which would have left no doubts about the restrictive intentions and interpretations some would give in the future to articles 8 and 19 of the Constitution. To this Jesuit argument Giorgio Spini replied in *Il Ponte*: “se tale veramente è la dottrina del cattolicesimo in materia religiosa, è legittimo pensare che principî non dissimili informino l’azione degli uomini di governo di parte cattolica, che reggono attualmente le sorti della Repubblica”; he then calls for the government to respect articles 8 and 19 of the Constitution.⁹⁷⁵

In a useful analysis of the condition of the Protestants post-Constitution, Peyrot defines a series of phases through which the minority religions passed on the road to full liberty. The first phase, lasting from 2nd June 1946 until 18th April 1948,

⁹⁷³ Ibid., p. 203.

⁹⁷⁴ Falzone, *La Costituzione ed i culti non cattolici*, pp. 61-2.

⁹⁷⁵ Cited in *ibid.*

covered the period of the liberation of the nation and the hopeful period of the formation of the Constitution during which they assumed that the oppressive Fascist laws that had for so long curbed their activities would finally be dismantled.

However, these expectations were doomed to speedy disappointment with the second phase which began on April 18th 1948, when the Christian Democrats gained an absolute majority in the Italian General Elections and lasted for the whole period of De Gasperi's administration, until June 7th 1953. As far as the religious minorities were concerned this was a period of marked reaction on behalf of the Government. Through police action there followed an unbroken sequence of acts of violent intolerance, clearly aimed at preventing the Protestants from enjoying their new freedom and rights allowed under the Constitution, and with the purpose of subjecting them to the full weight of the body of restrictions enacted by the previous legislature. In the period immediately following the adoption of the Constitution, both the Ministry of the Interior and the local authorities set in motion again the regulations of 1929/30 in their most oppressive interpretations against the Protestants, in whom the Fascist regime had detected 'widespread, if at times unacknowledged, hostility towards Fascism, rooted in their fundamental religious principles' [Circular of the Minister of the Interior, 441/02977, March 13th 1940, published in 'Il diritto ecclesiastico', 1951, p.213]. The effect of these measures that predated the Constitution being reasserted was felt in many provinces, especially in Southern Italy: Protestant meetings were broken up by force; ministers of religion were forbidden to exercise their spiritual office; places of worship were closed. Where orders were disregarded, the police had recourse to repatriation of ministers, interdictions, arrests and criminal procedures.⁹⁷⁶

As if confirming the link between the Dc majority governments and the increase in harassment of the Protestants, when they lost their absolute majority following the elections for the second legislature on June 7th 1953, there followed a gradual slackening in intensity of these acts of intolerance. As Peyrot says,

thus opened a new chapter in which police interference gradually lost its violent character, but only to assume new guises of seeming legality. In this phase, extending from June 7th 1953 to June 14th 1956, the public authorities have lent their aid to ideas emanating from Catholic sources [in particular

⁹⁷⁶ For details of such instances of police action, see G. Spini, *Le minoranze protestanti in Italia*, in *Il Ponte*, 1950, no. 6, pp. 667-9; G. Salvemini, *I protestanti in Italia*, in *Il Mondo*, 09.08.1952; G. Spini, *Le persecuzioni contro gli evangelici in Italia*, in *Il Ponte*, 1953, no. 1, pp. 1-14; A.C. Jemolo, *Per la libertà religiosa in Italia*, in *Nuovi Argomenti*, 1953, no. 2, pp. 1-46. All cited in Peyrot, *Religious liberty and conditions of Evangelical People in Italy*, p. 7.

Padre S. Lener, in a series of articles for *La Civiltà Cattolica*, written between 1951 and 1953] and shown a remarkable thoroughness of research in all the variety of cases, into all the possible ways of repressing with every appearance of legality the religious activities of the Protestant Communities, and especially every effort at propaganda or expansion.⁹⁷⁷

This new phase resulted in quibbling interpretation of the laws on the religious minorities coupled with attempts to reconcile their restrictions with the freedoms laid down by the new Constitution and, according to Peyrot, even attempts by the authorities to explain how, and in what manner, the Constitution, despite its most explicit statements, had not really made any innovations as regards the legal position of the Protestant minorities, which, it was intended, were to be fixed once and for all by the regulations of the Fascist era.⁹⁷⁸

The fourth phase, from June 14th 1956, had its origin in the first pronouncement by the Constitutional Court. Although it had nothing to do with the laws on religious minorities specifically, it was, as Peyrot suggests, a “momentous sentence”.⁹⁷⁹

The hypothesis that the new canon of constitutional illegitimacy refers only to laws passed since the Constitution came into being, and not to laws passed before that date, cannot be entertained, since it is axiomatic that the relationship between ordinary and constitutional law, and the degree of precedence, deriving from their origin, that they enjoy in the hierarchy of law, do not change in any way, whether the ordinary laws be made before or after the constitutional ones. In either case, the constitutional law, being by nature inherent in the system of the established constitution, must take precedence over ordinary law.⁹⁸⁰

However, as Peyrot points out, those laws anterior to and contradicting the terms of the Constitution were not, as a result of this judgement automatically abrogated. As already shown, all it meant was that if cases were to be brought to trial that applied to those laws, they could, at the discretion of the magistrate, be brought before the Constitutional Court to test whether they were legitimate under the Constitution. Peyrot's view of the relevant articles in the Constitution dealing with the individual's right to religious worship of their own choosing is very clear. With reference to articles 3, 8 (clause 1), 19 and 20, he says it is enough

⁹⁷⁷ Ibid., p. 8.

⁹⁷⁸ Ibid.

⁹⁷⁹ Ibid., p. 13.

⁹⁸⁰ Constitutional Court sentence No. 1. 5/14. VI.1956, in Gius. pen., 1956, I, 238; cited in *ibid.*, pp. 12-13.

to stress how complete they each are. Both from the point of view of formulation, and of content, they have all the elements of full legal authority, including directions as to the means and limits within which the rights they recognise may be exercised. These principles quite clearly can be applied in their specific field without waiting for laws, even executive directions, to be made.⁹⁸¹

He clarifies this point adding:

The Constitution recognises complete religious equality in Article 3, as a general rule, and consequently establishes the principle of equal freedom (Article 8), specifying for each individual and for the various religious bodies the right to manifest and propagate their beliefs, and to worship in public or private. Article 19 lays down the way in which these rights may be exercised and the limits set to them. Finally, in Article 20, the State is expressly forbidden to apply to these rights, as to others, any restrictive measures of its own making.⁹⁸²

This seems to imply that all the police action taken under the protection of the Fascist laws was constitutionally illegal. But without an effective Constitutional Court such actions would continue unchallenged. So, in theory, all minority religious groups should, even in 1948, have been free from all restrictions and discrimination which would have put them in an unfavourable position as compared to the Roman Catholic Church.⁹⁸³ It appears, therefore, that, apart from the complication of article 7 of the Constitution, the quagmire of contradictory legal and constitutional norms could have been quite simply dealt with by giving juridical prominence to the principles of articles 8, 19 and 20 and abrogating all anterior laws that contradicted them. Peyrot agrees:

The problem of the position of Protestants in Italy will automatically be solved by simply putting into effect the principles expressed in the Constitution. This will mean, however, that their clear and unequivocal tones must be allowed to prevail over the spoiling tactics of a reactionary and intolerant spirit, which, itself, a survivor from the past, tries to write into the new legal order relics of a legislation whose existence can only be justified by the political atmosphere of the times in which it was imposed.⁹⁸⁴

Despite all the manoeuvring at judicial and constitutional levels, the condition of the Protestants remained the same, as stressed even by the Catholic Jemolo:

⁹⁸¹ Ibid., p. 19.

⁹⁸² Ibid., pp. 19-20.

⁹⁸³ Ibid., p. 21.

⁹⁸⁴ Ibid., p. 25.

A superficial study of the Italian penal code at once reveals the confessional character of the law which prescribes penalties for the vilification of the Catholic religion but not of other religions, and which makes the severity of the punishment imposed for offences against ministers of religion and for the creation of disturbances at religious ceremonies dependent on whether the misdemeanours in question are committed at the expense of the Catholic religion or of other religions . . . A cursory glance at the corpus of Italian law immediately confirms that the State has exceeded its formal obligations towards the Church, in the sense that it continues to accord its economic aid over and above the amount promised, providing subsidies for the building and repair of churches which, though certainly not very large in relation to the State budget as a whole, are generally considered substantial enough in view of the conditions in which the poorer classes in Italy are condemned to live . . . [In] every programme of public works sponsored by the State much prominence is given to plans for the erection of churches and presbyteries . . . where there are areas to be reclaimed or transformed the authorities always accord priority to [Catholic] ecclesiastical building.⁹⁸⁵

But it is the State's treatment of the non-Catholic minorities where the confessional character of the State is most clearly revealed, and there is an open, undisguised intention to disregard the Constitution.

There is no anti-Semitism. But outside the Communist and Socialist parties, which are a law unto themselves, no Jew has held a political position of importance since a few venerable survivors from the pre-Fascist era ceased to be members of the Senate . . . [The] authorities reveal an inflexible determination not to allow the ancient Waldensian sect to extend its influence beyond the boundaries of its two small Alpine Communes and not to permit *any Protestant propaganda. The most savage persecution is reserved for the Pentecostals*, of whom there are many among the poorer classes in the south of Italy. But no member of a Protestant sect is allowed to carry on his activities outside the handful of non-Catholic churches . . . Failure to comply with the provisions of the Constitution [i.e. Articles 8 and 19] is justified by the whole Catholic press with the usual arguments about religious unity, the violation of consciences and the rights of the dominant confession in a country where religious dissenters amount to about 1.1 per cent (but where votes cast for parties condemned by the Church amount to 33 per cent) and with the truth's right to be protected against error.⁹⁸⁶

However, according to Jemolo, it would be a mistake to see in the 'intense Catholic sensibility' displayed by the judiciary,

an expression of government policy (which is reflected, on the other hand, clearly and unmistakably, in the persecution of the Pentecostals). This tinge of confessionalism in the body politic is largely due to the pressure of public opinion, to the presence of a 'conformist' tradition, and to the continuance of

⁹⁸⁵ Jemolo, *Church and State in Italy*, p. 310. It is worth noting that from May 1947 until January 1950 Umberto Tupini (Dc) was Minister for Public Works.

⁹⁸⁶ *Ibid.*, pp. 315-7. For anecdotal evidence of the persecution indicated above, see *ibid.*, pp. 318-9.

the mental habit fostered by Fascism . . . whereby the civil servant and the judge allow their actions to be influenced by the thought of what their superiors may think and how they are likely to react.⁹⁸⁷

Long agrees with Jemolo's assessment, and also displays a decidedly low opinion of the judiciary:

Non è difficile comprendere, sulla base dei comportamenti degli autorevoli magistrati presenti nella commissione del Ministero per la Costituente, quali fossero le tendenze prevalenti tra i giudici: ed appare allora chiaro come, negli anni successivi della Costituente, le norme sui culti troveranno una interpretazione parziale e persecutoria da parte dell'alta magistratura e della pubblica amministrazione, al di là delle stesse intenzioni dei governanti.⁹⁸⁸

But were the intentions of the magistrature or civil servants in fact any different to those of the government in wanting to prevent minority religions operating freely? If they were different, why did the latter not put systems in place to ameliorate the lot of the minorities by reducing police harassment, removing obsolete laws from the statute books and thus not giving the judiciary the legal means to shut down these groups and arrest or even extradite their leaders? Indeed, the actions of both government and judiciary would seem to stem from the same root: an unwillingness to incur the wrath of a Church intent (and very able) to play moral mind-games with institutions of state in order to satisfy its own unfounded anxieties in relation to a tiny minority of religious organisations whose doctrines did not coincide with its own 'truth'.

Even the Catholic scholar Scoppola admits that one should not be tempted to think that the fall of Fascism implied the end of Catholic intolerance towards the Protestants:

Troppo noti sono gli episodi di intolleranza che accompagnano la rinascita democratica del Paese e che non si possono certo attribuire semplicisticamente ad ottusità o insensibilità dei governi del tempo: in essi non può non vedersi il segno del perdurare fra i cattolici di diffusi sentimenti di ostilità agli evangelici e in genere di scarsa sensibilità ai valori di libertà religiosa.⁹⁸⁹

Scoppola sees a shift in attitude only in the 1960's following the Second Vatican Council "nel clima di un nuovo ecumenismo."⁹⁹⁰

⁹⁸⁷ Ibid., p. 320.

⁹⁸⁸ Long, *Alle origini del pluralismo confessionale*, pp. 324-5.

⁹⁸⁹ Scoppola, *Il fascismo e le minoranze evangeliche*, pp. 366-7.

⁹⁹⁰ Ibid., p. 367.

Regarding Article 8 of the Constitution, interpretation has been guided by a single ruling, pronounced by the lower Court judge of Buccino on the 22 December 1949 and published in *Il Diritto ecclesiastico* (1951, p. 838):

L'art. 8, comma 1° della Costituzione della Repubblica, per la sua compiutezza e concretezza, deve ritenersi di indole precettiva e di immediata applicazione. Pertanto, avendo detto articolo riconosciuto che tutte le confessioni sono egualmente libere davanti alla legge, non possono ritenersi in vigore le disposizioni contrastanti a tale precetto di natura imperativa. Entrata in vigore la nuova Costituzione italiana, che stabilisce il principio della libertà di culto, è stata regolata diversamente la relativa materia, per cui i principî contenuti nella precedente legge 24 giugno 1929, n.1159, sui culti ammessi sono divenuti incompatibili con i nuovi. Con l'entrata in vigore della Costituzione della Repubblica, la legge 24 giugno, n.1159, e il relativo regolamento non sono più in vigore in ordine alla approvazione governativa richiesta per i ministri dei culti ammessi⁹⁹¹.

Falzone details three incidents which, despite this court ruling, show how intolerant the State was towards non-Catholic religions in the post-war years despite the provisions of articles 8, 19 and 20 of the new Constitution. One of the incidents concerns an Italo-american pastor called Caliandro who set up an 'Istituto biblico' at Portici to take in apostate Catholic priests, who found themselves in dire straits as a result of article 5 of the Concordat. In four years the institution sheltered thirteen priests, but in February 1953, the Questore of Naples ordered that it be shut down and that Caliandro should leave Italy, because he had allegedly failed to renew his residency permit. Caliandro wrote to the Interior Ministry but they only confirmed the ruling of the Questore. The Catholic newspaper *Il Quotidiano* (21 February 1953, editorial) emphasised that the incident simply related to the renewal of the permit, but added:

la posizione dei cattolici italiani nei riguardi della propaganda protestante non è nuova. Noi non neghiamo agli acattolici il diritto di praticare il loro culto e di vivere, nell'ambito della legge, secondo le loro convinzioni: non possiamo ammettere, invece, il proselitismo protestante, perché l'Italia, paese di cristianesimo antico, non è terra di missione per sette difformi, non poche delle quali sono lontano tra di loro almeno quanto distano dal cattolicesimo. Il proselitismo ci offende e dirlo apertamente, senza perifrasi, è il nostro diritto . . . Siamo pronti ad accettare l'accusa di intolleranza e a rispondere, se

⁹⁹¹ Cited in Falzone, *La Costituzione ed i culti non cattolici*, p. 54. Falzone gives a brief list of interesting articles on the subject of religious freedom, some in *Il Ponte* (G. Spini, *Le minoranze protestanti in Italia*, 1950, p.670; G. Spini, *La persecuzione contro gli evangelici in Italia*, 1953, fasc. 1, p. 1ff.); others in the weekly *Il Mondo* (G. Salvemini, *I protestanti in Italia*, 9th August 1952; *Ritorno dell'inquisitore*, (editorial), 28th October 1952). Cited in *ibid.*, p. 55.

del caso, come di dovere. Ma fin d'ora è bene si sappia, dalle autorità, dagli amici e dagli avversari, che cosa pensano i cattolici.⁹⁹²

Falzone notes that the right to proselytism is allowed by article 19 of the Constitution.

Two of the main protagonists of the debate on religious freedom for the minorities were liberal Catholic Arturo Carlo Jemolo and the Jesuit padre Salvatore Lener, “fermo assertore della ‘verità’ cattolica”, to use Falzone’s words. In the July – September 1952 edition of *Il Diritto ecclesiastico*, Jemolo wrote an article entitled *Le libertà garantite dagli articoli 8, 19 e 21 della Costituzione*. As regards the Catholic Church’s reticence to allow the minority religions to proselytise, despite the provisions of articles 19 and 20, Jemolo says: “Non c’è più libertà se io non posso comunicare ad altri, a voce e per scritto, ciò che penso in qualsiasi argomento: filosofico o cosmologico o naturalistico o religioso.”⁹⁹³

Highlighting just one of the conflicts between the *culti ammessi* laws and article 8, Jemolo explains how

dalla elaborazione del primo comma dell’articolo 8 (‘tutte le religioni sono egualmente libere davanti alla legge’) trae motivo per sostenere la soppressione dell’articolo 1 del regio decreto 28 febbraio 1930, n. 289, ‘in quanto comportava la necessità di un autorizzazione per aprire tempi ed oratori’; necessità di autorizzazione che è in insanabile contrasto con l’*egualmente libere* dell’articolo 8 e con l’esercizio in pubblico del culto dell’articolo 19; comunque il diritto di far propaganda è esplicito . . . Si nega . . . la libertà di propaganda, pure senza osare di enunciare chiaramente questo diniego, quando si dice che la propaganda non deve offendere le opinioni che possono essere più care a chi ascolta. Nei paesi dove c’è una tradizione di libertà, anche i sostenitori delle dottrine più stravaganti sono liberi di esporle in pubblico; ed i cittadini sono liberi di non ascoltare chi le espone, o di ridere delle stravaganze che si sentono propinare: e le autorità religiose sono libere di ordinare ai loro fedeli di non ascoltare. Ma se sorgono poi tumulti sarà chiaro che il contravventore alla legge sarà colui che, invece di allontanarsi o di scrollare le spalle nell’udire quelle che per lui erano stravaganze o anche dottrine ripugnanti, avrà preteso usare la violenza per ridurre al silenzio chi le enunciava.⁹⁹⁴

Lener’s reply to Jemolo’s article came in two parts: in the January 3rd and March 21st 1953 editions of *La Civiltà cattolica*. Above all he emphasised that the discussion should contribute to

⁹⁹² Ibid., pp. 56-7.

⁹⁹³ Ibid., p. 62.

⁹⁹⁴ Cited in *ibid.*, pp. 62-4.

render certo il diritto vigente, in una materia che, a torto o a ragione, divenuta ancora una volta incandescente. Di fronte ad una legge certa, ancorché meno favorevole ad una minoranza confessionale, i suoi membri più sereni possono ben dire: *dura lex sed lex*; di fronte ad una norma equivoca, che sembra per sé poter favorire tanto le aspirazioni di quel gruppo quanto quelle contrarie della maggioranza, l'applicazione che se ne faccia dagli organi dello Stato offenderà sempre e intollerabilmente gli uni, che si diranno perseguitati, e gli altri, che lamenteranno la violazione di diritti ritenuti sacri. Il guaio è che gli interpreti della sponda liberale non possono concedere neppure in ipotesi che i principî di libertà enunciati nella Costituzione siano non diciamo dubbi, ma incompleti, inidonei cioè a regolare tutta la materia che potenzialmente si riferiscono; con ciò stesso, infatti, essi ammetterebbero quello che assolutamente non vogliono, essere cioè le norme preesistenti tuttora in vigore.⁹⁹⁵

Lener points out that article 19 differentiates between 'l'esercizio di culto e di rito':

*L'atto di culto è atto col quale internamente o esternamente, in privato o in pubblico, si venera la divinità. Per riti si intendono, invece, quelle forme secondo cui devono svolgersi gli atti del culto esterno, specialmente pubblico; forme stabilite dalle norme liturgiche, dai rituali, dagli statuti e consuetudini delle singole confessioni . . . Per sé, la sfera dell'individuale libertà di culto comprende gli atti, non i riti in senso proprio. Questi, in quanto determinazione normativa delle forme del culto, sono qualcosa che appartiene alla comunità dei fedeli, e alla comunità che abbia già una sua fisionomia specifica e una relativa stabilità . . . Non solo il rito appartiene alla comunità, ma esso è elemento essenziale e costitutivo della sua realtà sociale; è anzi talvolta il vincolo precipuo che unisce i fedeli in società spirituale . . . Nelle confessioni cristiane, nelle quali l'unica autorità dottrinale è la Bibbia liberamente interpretata e una vera e propria gerarchia giuridica non è ammessa, il solo connettivo sociale che valga a distinguerle fra di loro è appunto il rito (o complessi di riti).*⁹⁹⁶

Peyrot points out that one significant change in the law in favour of the religious minorities was that on 16th April 1955, 20 years after it was issued and after more than 7 years of the Republican Constitution, the Protestant Churches succeeded in obtaining an official pronouncement revoking the Buffarini-Guidi Circular of April 9th 1935. The circular ordered the disbanding of Pentecostal groups and the closure of their chapels, forbidding any expression of their religion on the specious grounds of preserving "the physical and psychological integrity of the race".⁹⁹⁷

⁹⁹⁵ Cited in *ibid.*, p. 65.

⁹⁹⁶ Cited in *ibid.*, p. 66. Falzone explains the apparently different interpretations assumed by Jemolo and Lener on the term 'rito'. Lener uses it in a strictly theological sense which suits his argument, but does not at all coincide with the more common open interpretation given to the word as used in juridical language (and hence in the Constitution). *Ibid.*, p. 67.

⁹⁹⁷ Peyrot, *Religious liberty*, p. 6.

b) *The condition of the Catholic Church post-Constitution*

Unlike the situation of the minority churches, it can be quite safely said that there was no diminution of the powers, scope and influence of the Catholic Church in the aftermath of the Constitution. Indeed, the debt owed to it by the Dc party for its support in the national elections from 1948 onwards ensured that it could add to its armoury a political influence at least on a par with that which it enjoyed during the early years of Fascism.

However, the support of the Vatican proved to be a mixed blessing for De Gasperi and the Dc. Catholic success in the 1948 elections gave rise to a spirit of Catholic triumphalism, to a climate of confessional intolerance in which Italy in the 1940's and 1950's has been described as 'the Papal State of the Twentieth Century'. Thanks to Italy's napoleonic, highly centralized administrative system, Catholic power at a national level was effectively replicated at local government level, creating a repressive atmosphere for political and religious minorities. Moreover, the Italian Catholic world sought to match political dominance with the establishment of a cultural hegemony, though in this case not so successfully, over Italian society. In these circumstances, Pope Pius XII tended to see the Dc as merely the long, secular arm of the ecclesiastical hierarchy. Without a solidly established organisational base of its own, the Dc under De Gasperi had to fight hard to escape the more extreme demands of the Pope and his advisors.⁹⁹⁸

Even the eminent Catholic commentator, Scoppola, concedes this point:

Alla base della società italiana la Chiesa era . . . una realtà così capillarmente presente e così efficacemente operante che i suoi orientamenti e le sue scelte avevano immediate ripercussioni e conseguenze decisive anche sul piano civile e politico.⁹⁹⁹

In another work, Scoppola states categorically that "l'Italia fu sede in quegli anni di 'un grandioso esperimento cattolico'".¹⁰⁰⁰ However, their dominant position in the peninsula following the promulgation of the Constitution did little to alleviate the deep-seated concerns the Church had regarding the freedom to proselytise afforded to the protestant denominations by the Constitution. This concern can be clearly seen in a circular promulgated by Cardinal Schuster, Archbishop of Milan and published in *Il Diritto ecclesiastico* (1952, October-December, p. 576):

⁹⁹⁸ Buchanan and Conway, *Political Catholicism in Europe*, p. 88.

⁹⁹⁹ Scoppola, *Gli anni della Costituente*, p. 42.

¹⁰⁰⁰ Scoppola, *La repubblica dei partiti*, p. 98.

In una nazione che nella sua immensa maggioranza è cattolica di professione, di tradizione e di civiltà, il protestantesimo viene subdolamente ad incrinare questa unità tradizionale, fondando altre ed opposte associazioni religiose al comando e al soldo dei capi esteri. Lo Stato non vede nessun pericolo in quest'altra colonna straniera che ormai va diramandosi largamente nelle nostre contrade? Intendiamoci. La fede non s'impone, e la Chiesa ha sempre tutelato la libertà di coscienza, ordinando che persino gli ebrei possedessero indisturbati le loro sinagoghe ove svolgere il loro culto. In Italia sono molte colonie forestiere eterodosse, che nei propri templi svolgono liberamente il loro servizio religioso. Ma altra è libertà di coscienza e di culto di cui legalmente godono quei forestieri, e altra invece è la illegale propaganda che subdolamente vanno facendo dei pastori e missionari protestanti tra le nostre popolazioni cattoliche, per indi disseminare la discordia nelle famiglie, la scissione nei paesi, la divisione religiosa nella Nazione Cattolica . . . Mettendo in guardia sacerdoti e fedeli contro il pericolo protestantico, che cosa domandiamo? Che sia rispettata, giusta le leggi, la libertà di coscienza *soprattutto per riguardo dei cittadini stranieri*; ma che, per motivi superiori d'ordine religioso e politico, sia raffrenata la libertà, specialmente a preti e frati apostati, d'incrinare con le loro storture l'unità degli italiani, per costituire nel territorio nazionale delle seste colonne all'alto comando gerarchi stranieri.¹⁰⁰¹

The tone of his article raised concerns in the mind of Deputy Luigi Preti (Psl) who tabled a number of questions for the *Ministro dell'interno* during October 1952 asking the minister to denounce the article and defend the right of Protestants to proselytise as laid down by the Constitution. Preti saw this Church posturing as

una dimostrazione di superficialità di pensiero e di ristrettezza di idee, posto che, in fondo, quei pochi fedeli che la Chiesa può perdere per la propaganda protestante sono ben poca cosa di fronte ai milioni di cittadini che, per effetto delle nuove idee scientifiche e filosofiche, sono diventati e stanno diventando liberi pensatori, e anche di fronte ai milioni di fedeli che, praticamente, la Chiesa viene a perdere per la penetrazione di certe ideologie politiche, che sostituiscono, nell'animo delle classi lavoratrici, la religione tradizionale.¹⁰⁰²

In the morning session of 30th October 1952 Deputy Bogoni tabled a motion in which he proposed that the Chamber affirm that “devono essere garantite effettivamente anche agli acattolici la libertà di coscienza e di culto (pubblico o privato, individuale o collettivo) e la libertà di propaganda religiosa.”¹⁰⁰³ That same afternoon the Minister for the Interior, Mario Scelba (Dc) refused to accept his motion “per lo spirito che lo anima”. It was put to the vote and thrown out, at best ignoring and at worst in clear breach of the Constitution.

¹⁰⁰¹ Cited in Falzone, *La Costituzione ed i culti non cattolici*, p. 68.

¹⁰⁰² Ibid., p. 69.

¹⁰⁰³ Ibid.

(vi) Final observations

Although Catholic politicians throughout the 1940's and 50's truly believed that their ideals were different from those of the Fascists, the reality of the situation was that "the almost messianic belief" in the integralist ideals nurtured and put into practice first by the Catholic Action groups and subsequently by the Dc were in fact no different from the "'totalitarian' ambition of fascist movements to control all sectors of national life."¹⁰⁰⁴

It must be remembered that throughout the Constituent Assembly years and beyond, the *status quo* of a dominant Catholic Church and a penal system based, not only in the realm of religious liberty, on a potent concoction of oppressive Fascist legislation and Catholic integralist ideals was deemed acceptable to the ruling Dc party, even though they contravened not only the basic principles of democracy, but also several articles of the new Republican Constitution. Jemolo strongly criticised this lack of motivation for change in the Constituent Assembly:

It was not only that in the matter of ecclesiastical policy they proclaimed their support for the Concordat, without reservation and in defiance of the principle that all religions are equal before the State, but in every other field too their one concern was to go slowly, to avoid coming to grips with concrete problems, to change nothing.¹⁰⁰⁵

Furlong points out that "the only issues which underwent radical amendment were State/Church relations, regional government, the Constitutional Court and the role of the Senate. There was no substantial support for the Constitution to be submitted to popular referendum."¹⁰⁰⁶ Even then, it was seven years before the constitutional court was established, twenty two years before the first elections for the ordinary regions and twenty before the referendum law was approved.¹⁰⁰⁷

Calamandrei (Pda) later referred to the text of the Constitution as 'that old aunt, a bit eccentric and a bit of a visionary', suggesting rather more fondness than respect for the Constitution,¹⁰⁰⁸ while according to Giovagnoli,

il testo finale della Costituzione repubblicana appare l'espressione di una stratificazione giuridica plurisecolare che recepisce anzitutto i principi fondamentali della cultura liberal – democratica . . . Il testo del '48, inoltre, malgrado il suo carattere dichiaratamente rigido, ha mostrato inaspettate doti

¹⁰⁰⁴ Conway, *Catholic Politics in Europe*, p. 61.

¹⁰⁰⁵ Jemolo, *Church and State in Italy*, pp. 335-6.

¹⁰⁰⁶ Furlong, *Modern Italy*, p. 64.

¹⁰⁰⁷ *Ibid.*, pp. 71-2.

¹⁰⁰⁸ Cited in *ibid.*, p. 66.

This attribute of ‘elasticità’, as we have seen, allowed the judiciary, in cases involving the religious minorities, either to openly ignore articles of the Constitution when passing judgements, or to interpret them in so many ways as to render them unworkable.

Scoppola describes the Constitution as the “figlia della politica, si è formata in una Assemblea . . . attraverso una serie di scontri, confronti e compromessi dei quali furono protagonisti i partiti politici.”¹⁰¹⁰ Although Scoppola’s statement is *correct, with regard to articles relating to Church/State relations and religious freedom* it needs to take into consideration the fundamental role played by the Vatican in the background to the debates. As already discussed, during the post-war period, the Vatican enjoyed an enormous degree of respect and influence throughout Europe and the world – a situation that was particularly evident in Italy, where directives from the highest level were carried out to the letter in the dioceses and parishes. The Holy See recognised this trend of overweening allegiance and gratitude for the way it conducted itself, at least on a spiritual level, throughout the war, and capitalised on it to secure the guarantees it sought for itself in the Constitution, principally the inclusion of the Lateran Pacts. In this respect, a comparison of the conclusions in the document produced by ICAS (a branch of Catholic Action) and the arguments put forward by the Catholic *costituenti* show striking similarities.¹⁰¹¹ *Although the Vatican had no official voice in the constitutional debates, it is worth noting the connection between ICAS and the Catholic hierarchy.* As has been shown in Section A3, in the Catholic Action Statutes of 1940, Pius XII replaced all the lay leaders of Catholic Action organisations with high level ecclesiastics. Although this level of control by the Vatican on the work of Catholic Action was relaxed somewhat after the war, the various branches of the organisation (ICAS included) remained under the control of the hierarchy of the Catholic Church. This, and the fact that a copy of the document was sent to the Vatican Secretariat of State, suggests at least a very keen interest at the highest levels of the Holy See in the conclusions reached by the ICAS commission.

No doubt with these and other manoeuvres of the Catholic hierarchy and its affiliated organisations in mind, Francesco Saverio Nitti accused Subcommittee 1

¹⁰⁰⁹ Giovagnoli, *Il partito italiano*, pp. 24-5.

¹⁰¹⁰ Scoppola, *La repubblica dei partiti*, p. 181.

¹⁰¹¹ See Section A3 (vii) c) and Section B of this thesis.

of “incompetence” in the preparation of the Constitution, although his accusation was roundly denounced by Meuccio Ruini, President of the Commission of 75, who asserted that

nella nostra Commissione i partiti hanno designato essi i propri membri; potevano scegliere; hanno gli uomini che credevano più adatti a questa bisogna. Nella Commission vi erano i capi, i dirigenti, di quasi tutti i partiti. Vi erano gli esponenti alla testa delle organizzazioni operaie; ed anche della associazione delle società per azioni; vi erano giuristi – il fiore dei costituzionalisti italiani – vi erano economicisti; basta che ricordi il nome del maggiore economista italiano: Einaudi. Non era un commissione di incompetenti.¹⁰¹²

However, the plethora of compromises and patently contradictory articles that found their way through the subcommissions, past the debates of the full Constituent Assembly, with its phalanx of civil and ecclesiastical law experts, and into the Constitution, which then caused the subsequent difficulties in the application of laws throughout the country, certainly seems to suggest to the *laicista* mind-set of Nitti and others, if not incompetence a conscious neglect of some fundamental principles concerning religious freedom, which is perhaps worse. In this connection, one cannot overlook the critical role of the Pci in the debates, and its decision to vote with the Dc to secure the inclusion of the Lateran Pacts in the Constitution. The Communists, with their decision not to do battle beyond a certain point at the *costituente* in the interests of a longer-term strategy, left unresolved problems which subsequently contributed to juridical confusions and real cases of religious oppression. Consequently, any real change that could, and clearly should, have occurred in the area of religious liberty did not happen for a number of reasons: primarily, the reticence of a government paralyzed by inertia and a fear of fundamental changes to the Italian legal system on the one hand, and the determination of the Catholic Church, intent on exploiting the advantages of a sympathetic government for its own benefit on the other. As a result both institutions were perfectly prepared to leave the country’s political, administrative and juridical system in a weak state, while the Constitution, which was in many ways quite radical and forward looking, ultimately had little impact on a legal system that condoned the same oppressive treatment of religious minorities as had been meted out under Fascism.

¹⁰¹² Cited in Scoppola, *La repubblica dei partiti*, p. 182.

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APPENDIX I

the members of the Constituent Assembly¹

...zzi, Giuseppe	Uq	Benedettini, Luigi Filippo	Bnl
...nnino, Giovanni Battista	Dc	Bennani, Luigi	Psli
...erganti, Giuseppe di Angelo	Pci	Benvenuti, Lodovico	Dc
...erri, Antonio	Dc	Bergami, Gino	Ind
...erri, Giuseppe	Psiup	Bergamini, Alberto	Misto
...isio, Salvatore	Dc	Bernabei, Bruno †	Pri
...egato, Luigi	Pci	Bernamonti, Dante	Pci
...adei, Leonetto di Luigi	Psi	Bernardi, Adriano	Psi
...hrosini, Gaspare	Dc	Bernini, Ferdinando	Psi
...endola, Giorgio	Pci	Bertini, Giovanni	Dc
...reotti, Giulio	Dc	Bertola, Ermenegildo	Dc
...ellini, Armando	Dc	Bertone, Giovanni Battista	Dc
...elucci, Nicola	Dc	Bettiol, Giuseppe	Dc
...ta, Giuseppe	Psli	Biagioni, Loris	Dc
...nini, Giuseppe	Dc	Bianchi, Bianca (before 15.7.46, Psiup)	Psli
...rangelì, Alessandro	Dc	Bianchi, Bruno	Pci
...enato, Mario Frixos di Felice	Pci	Bianchi, Costantino	Psi
...anazini, Ennio	Dc	Bianchini, Laura	Dc
...oldi, Carissimo Giuseppe	Uq	Bibolotti, Aladino	Pci
...rali, Leone	Pri	Binni, Walter	Psli
...zi, Arnaldo	Pri	Bitossi, Renato	Pci
		Bocconi, Alessandro	Psli
		Boldrini, Arrigo	Pci
		Bolognesi, Severino	Pci
...ccicori, Luigi	Dc	Bonfantini, Corrado	Psli
...mini Confalonieri, Vittorio	Udn	Bonino, Uberto	Udn
...lassari, Gino	Pci	Bonomelli, Oreste	Psi
...luzzi, Luigi	Dc	Bonomi, Ivanoe	Misto
...racco, Leopoldo	Dc	Bonomi, Paolo	Dc
...rbareschi, Gaetano	Psi	Bordon, Giulio	Auto
...rdini, Vittorio	Pci	Borsellino, Raimondo	Dc
...argagna, Italo	Pci	Bosco Lacarelli, Giambattista	Dc
...rontini, Anelito	Pci	Bosi, Ilio	Pci
...rontini, Ilio	Pci	Bovetti, Giovanni	Dc
...ralini, Ezio	Psiup	Bozzi, Aldo	Udn
...ale, Guido	Pdl	Braschi, Giovanni	Dc
...asano, Carlo	Pdl	Bruni, Gerardo	Pcs
...asso, Lelio	Psi	Brusasca, Giuseppe	Dc
...stianetto, Celeste	Dc	Bubbio, Teodoro	Dc
...stisi, Luigi	Psi	Bucci, Quinto	Pci
...zoli, Stefano	Dc	Buffoni, Francesco	Psi
...a Adele	Pci	Bulloni, Pietro	Dc
...lato, Angelo	Dc	Buonocore, Giuseppe	Bnl
...lavista, Girolamo	Udn	Burato, Arturo	Dc
...lusci, Giuseppe Salvatore	Pri		
...lotti, Giuseppe	Dc		
...ncivenga, Roberto	Bnl		
...nedetti, Tullio	Misto		

The information detailed here is taken from the Biblioteca della Camera dei Deputati (a cura di) *Indice generale dell'attività parlamentare dei Deputati (Assemblea Costituente – Camera dei Deputati – dal 25 giugno 1946 al 31 gennaio 1948)* Vol.30 Roma: Tipografia della Camera dei Deputati, 1949. The political parties appended against each name refers to the parties which they belonged to at the end of the Constituent Assembly's work. Those members whose names are followed by a † died during the term of the Constituent Assembly.

ore, Luigi	Psi
Edmondo	Dc
Italo Giulio	Dc
Arrigo	Psli
andrei, Piero	Auto
Carlo	Psi
Umberto	Psi
Ludovico	Pri
Pietro	Dc
osarcuno, Michele	Dc
Giuseppe	Udn
Giuseppe	Psli
ari, Emilio	Psli
zoo, Bartolomeo	Udn
li, Giovanni Ernesto	Psli
Paolo	Dc
ietti, Guglielmo	Dc
Giuseppe	Dc
gi, Renato	Dc
ni, Aldo	Pci
Antonio	Uq
ini, Nicolò	Udn
ari, Luigi	Dc
ni, Angelo	Psli
ni, Enrico	Dc
ani, Giovanni	Dc
ia, Carmelo	Dc
agnola, Luigi	Psi
eo, Francesco	Bnl
ia, Giuseppe	Dc
o Maglioli, Ernesto	Psi
elli, Benedetto	Dc
Giovanni	Psli
Giovanni	Dc
ni, Gennaro	Dc
Avolio, Giuseppe	Dc
Edgardo	Dc
ia, Pietro	Udn
giovanni, Attilio	Misto
ari, Vincenzo	Pci
Antonio	Dc
loti, Alberto	Pci
Giulio	Pci
otto, Mario	Pdl
an, Luigio	Dc
amello, Domenico	Psli
ni, Gaetano	Pci
ri, Francesco	Dc
ergi, Giuseppe	Pri
illi, Giovanni	Dc
lungo, Nicola	Dc
one, Vincenzo	Udn
Antonio	Udn
ati, Fiorenzo	Dc
ani, Mario	Dc
Edoardo	Dc
q, Ivo	Dc
ci Pisanelli, Giuseppe	Dc
gnola, Tristano	Auto

Colitto, Francesco	Uq
Colombi, Arturo	Pci
Colombo, Emilio	Dc
Colonna di Paliano, Carlo	Bnl
Colonnetti, Gustavo	Dc
Conci, Elisabetta	Dc
Condorelli, Orazio	Bnl
Conti, Giovanni	Pri
Coppa, Ezio	Udn
Coppi, Alessandro	Dc
Corassori, Alfeo	Pci
<i>(Resigned 11.09.1946)</i>	
Corazzin, Luigi †	Dc
Corbellini, Guido	
<i>(Ministro Segretario di Stato per i trasporti)</i>	
Corbi, Bruno	Pci
Corbino, Epicarmo	Misto
Corsanego, Camillo	Dc
Corsi, Angelo	Psli
Corsini, Tommaso	Udn
Cortese, Pasquale	Dc
Cortese, Guido	Udn
Cosattini, Giovanni	Psi
Costa, Gastone	Psi
Costantini, Antonio	Psi
Cotellessa, Mario	Dc
Covelli, Alfredo	Misto
Cremaschi, Carlo	Dc
Cremaschi, Olindo	Pci
Crispo, Amerigo	Udn
Croce, Benedetto <i>(Senatore)</i>	Udn
Cuomo, Giovanni	Udn

D

D'Agata, Antonino	Pci
Damiani, Ugo	Misto
D'Amico, Diego	Dc
D'Amico, Michele	Pci
D'Aragona, Lodovico	Psli
De Caro, Gerardo	Dc
De Caro, Raffaele	Udn
De Falco, Giuseppe	Udn
De Filpo, Luigi	Pci
De Gasperi, Alcide	Dc
Del Curto, Giovanni	Dc
Della Seta, Ugo	Pri
Delli Castelli, Filomena	Dc
Del Vecchio, Gustavo	
<i>(Ministro Segretario di Stato per il tesoro)</i>	
De Maria, Beniamino	Dc
De Martino, Carmine	Dc
De Mercurio, Ugo	Pri
De Michele, Luigi	Dc
De Michelis, Paolo	Psi
De Palma, Giacomo	Dc
De Unterrichter, Jervolino Maria	Dc
De Vita, Francesco	Pri
Di Fausto, Florestano	Dc
Di Giovanni, Eduardo	Psli
Di Gloria Calogero, Lino	Psli
Di Vittorio, Giuseppe	Pci
Dominedò, Francesco Maria	Dc
Donati, Antigono	Pdl

Edoardo	Pci	Ghislandi, Guglielmo	Psi
Giuseppe	Dc	Giacchero, Enzo	Dc
Giuseppe	Pci	Giacometti, Guido	Psi
Eugenio	Psi	Giannini, Guglielmo	Uq
		Giolitti, Antonio	Pci
		Giordani, Igino	Dc
Luigi	Udn	Giua, Michele	Psi
Giuseppe	Dc	Gonella, Guido	Dc
		Gorrieri, Dante	Pci
		Gortani, Michele	Dc
Gustavo	Misto	Gotelli, Angela	Dc
Arnaldo	Dc	Grandi, Achille †	Dc
Netti, Cipriano	Pri	Grassi, Giuseppe	Udn
Luigi	Psi	Grazi, Enrico	Psi
Battista	Dc	Grazia, Verenin	Psi
	(Resigned 27.06.1947)	Greppi, Antonio	Psi
Amintore	Dc	Grieco, Ruggero	Pci
Luciano	Dc	Grilli, Umberto	Psli
Silvio	Pci	Grisolia, Girolamo †	Pri
Vannuccio	Psi	Gronchi, Giovanni	Dc
Giovanni	Pci	Guariento, Antonio	Dc
Carlo	Pci	Guerrieri, Emanuele	Dc
Aldo	Psi	Guerrieri, Filippo	Dc
Armando	Pci	Gui, Luigi	Dc
Maria	Dc	Guidi Cingolani, Angela Maria	Dc
Antonio	Dc	Gullo, Fausto	Pci
Giacomo	Pci	Gullo, Rocco	Psli
Celestino	Dc		
Pietro	Dc	I	
Cornelio	Psli	Imperiale, Giuseppe	Pci
Giuseppe	Psli	Iotti, Leonilde	Pci
Chiario Aprile, Andrea	Misto		
Umberto	Pci	J	
ino, Giosuè	Psi	Jacini, Stefano	Dc
Domenico	Psi	Jacometti, Alberto	Psi
Giuseppe	Dc	Jervolino, Angelo Raffaele	Dc
Vittorio	Pci		
Vittorio	Auto	L	
olo, Alberto	Psi	Labriola, Arturo	Udn
Palmiro	Dc	Laconi, Renzo	Pci
Piero	Psi	La Gravinese, Nicola	Uq
schini, Francesco	Dc	Lagravinese, Pasquale	Uq
Armando	Uq	La Malfa, Ugo	Pri
Giacinto	Dc	Lami Starnuti, Edgardo	Psli
Giuseppe	Dc	Landi, Romolo	Pci
Giuseppe	Udn	La Pira, Giorgio	Dc
		La Rocca, Vincenzo	Pci
		Lazzati, Giuseppe	Dc
Antonio	Dc	Leone, Francesco	Pci
Vito Giuseppe	Dc	Leone, Giovanni	Dc
Michelangelo	Udn	Lettieri, Rafaele	Dc
Spano, Nadia	Pci	Li Causi, Girolamo	Pci
Concetto	Misto	Lizier, Pietro	Dc
Giuseppe	Dc	Lizzadri, Oreste	Psi
rotto, Luigi	Pdl	Lombardi, Carlo	Pci
Alessandro	Dc	Lombardi, Giovanni †	Psi
Cesare	Pci	Lombardi, Riccardo	Auto
Attilio	Dc	Lombardo, Ivan Matteo	Psi
Galliano	Pci	Longhena, Mario	Psli
Silvio	Dc	Longo, Luigi	Pci
Vittorio	Pci	Lopardi, Emidio	Psi
Gustavo	Psli	Lozza, Stellio	Pci

D'Aprigliano, Roberto	Bnl
Virgilio,	Psi
Giuseppe	Psi
Emilio (originally Psda)	Auto
Cino	Pri
Abbrizio	Pci
Catullo	Uq
Marinno	Pci
Eliseo Giovanni	Pri
Luciano	Pri
Alcide	Psi
Abdon	Pci
Piero	Dc
Pietro	Psi
Salvatore	Dc
Raimondo	Dc
Achille	Dc
Concetto	Pci
Pasquale	Dc
Enrico	Psi
Francesco	Psi
Mario	Udn
Francesco	Bnl
Odio	Pri
Mario	Dc
Edoardo Angelo	
(Sottosegretario di Stato al Presidenza del Consiglio dei Ministri)	
Enrico	Pri
Gaetano	Udn
Achille	Dc
Cesare	Pci
Umberto	Pci
Debri Gesumino	Dc
Pietro	Auto
Ottavio	Uq
Bernardo	Dc
Teresa	Pci
Carlo	Psi
Matteo	Psli
Crescenzo (before 7.11.47, Uq)	Misto
Vincenzo	Pri
Nino	Psli
Luigi	Dc
Enrico	Dc
Piero	Dc
Mario	Psi
Angelina Livia	Psi
Umberto	Dc
Cesare	
(Ministero Segretario di Stato per il commercio con l'estero)	
Domenico	Pci
Giuseppe	Dc
Angiola	Pci
Enrico	Pci
Giuseppe Emanuele †	Psli
Enrico	Pdl
Guido	Pci
Riccardo	Psli
Mario	Pci

Montagnana Togliatti, Rita	Pci
Montagnani, Pietro	Pci
Montalbano, Giuseppe	Pci
Montemartini, Gabriele Luigi	Psli
Monterisi, Vito	Dc
Monticelli, Reginaldo	Dc
Montini, Lodovico	Dc
(brother of Giovanni Battista Montini)	
Morandi, Rodolfo	Psi
Moranino, Francesco	Pci
Morelli, Luigi	Dc
Morelli, Renato	Udn
Morini, Attilio	Psli
Moro, Aldo	Dc
Mortati, Costantino	Dc
Moscatelli, Vincenzo	Pci
Motolese, Alfonso	Dc
Murdaca, Filippo	Dc
Murgia, Francesco	Dc
Musolino, Eugenio	Pci
Musotto, Francesco	Psi
N	
Natoli Lamentea, Aurelio	Pri
Nasi, Virgilio	Pdl
Negarville, Celeste Carlo	Pci
Negro, Antonio	Pci
Nenni, Pietro	Psi
Nicotra, Maria	Dc
Nitti, Francesco Saverio	Udn
Nobile, Umberto	Pci
Nobili, Oro Tito Achille	Psi
Noce Longo, Teresa	Pci
Notarianni, Giuseppe	Dc
Novella, Agostino	Pci
Numeroso, Rafaele	Dc
O	
Orlando, Camillo	Dc
Orlando, Vittorio Emanuele	Udn
P	
Pacciardi, Randolfo	Pri
Pajetta, Gian Carlo	Pci
Pajetta, Giuliano	Pci
Pallastrelli, Giovanni	Dc
Paolucci, Silvio	Pri
Paratore, Giuseppe	Udn
Paris, Danilo	Psli
Parri, Ferruccio	Pri
Pasqualino Vassallo, Rosario	Pdl
Pastore, Giulio	Dc
Pastore, Rafaele	Pci
Pat, Bortolo Manlio	Dc
Patricolo, Gennaro	Udn
Patrissi, Emilio	Udn
Pecorari, Fausto	Dc
Pella, Giuseppe	Dc
Pellegrini, Giacomo	Pci
Pellizzari, Achille	Dc
Penna Buscemi, Ottavia	Udn
Pera, Giovanni Battista	Psli

Tommaso	Pri
ari, Giovanni	Dc
Capano, Giuseppe	Udn
Nicola	(Alto Commissario)
Giovanni	Psli
Sandro	Psi
Giulio	Uq
Antonio	Pci
Rafaele Pio	Dc
Attilio	Dc
Giuseppe Ernesto	Psli
ino	Psli
ari, Aldo Enzo	Psli
oli, Antonio	Dc
Umberto	Psi
Felice	Pci
mi, Elettra	Pci
Giovanni	Dc
elli, Francesco	Dc
Giovanni	Udn
ngo, Giordano	Pci
nti, Pietro	Psi
Luigi	Psli
Costantino	Pdl
Antonio	Psi
Alfredo	Dc
Alberto Mario	Pci
tenato	Udn
io, Gioachino	Dc
ni, Adolfo	Dc
ri, Quinto (formerly Udn, moved to)	Pli
do, Giuseppe	Dc
Giuseppe	Dc
an, Riccardo	Pci
Eugenio	Pci
Vito	Udn
Raffaele	Dc
no, Matteo	Dc
no, Pier Carlo	Dc
Francesco	Dc
Giuseppe	Pci
Stefano	Dc
Vincenzo	Dc
asario	Uq
di Miglione, Mario	Uq
Ugo	Dc
Arturo	Uq
Antonio	Dc
Giuseppe	Pci
Vittorio (Alto Commmissario)	
Enrico	Dc
Giuseppe	Pci
Maria Maddalena	Pci
Paolo	Psli
Giovanni	Pci
Alfonso	Udn
Luigi	Pci
Carlo	Psli

Ruini, Meuccio
Rumor, Mariano
Russo Perez, Guido

Misto
Dc
Udn

S

Saccenti, Dino	Pci
Saggin, Mario	Dc
Salerno, Nicola	Psli
Salizzoni, Angelo	Dc
Salvatore, Attilio	Dc
Sampietro, Umberto	Dc
Sansone, Luigi Renato	Psi
Santi, Ettore	Pri
Sapienza, Giuseppe	Psli
Saragat, Giuseppe	Psli
Sardiello, Gaetano	Pri
Sartor, Domenico Giacomo	Dc
Scalfaro, Oscar Luigi	Dc
Scarpa, Sergio	Pci
Scelba, Mario	Dc
Schiavetti, Fernando	Auto
Schiratti, Guglielmo	Dc
Scoca, Salvatore	Dc
Scoccimarro, Mauro	Pci
Scotti, Alessandro	Pdl
Scotti, Francesco	Pci
Secchia, Pietro	Pci
Segala, Mario	Psli
Segni, Antonio	Dc
Selvaggi, Vincenzo	(Bnl > Uq >) Udn
Sereni, Emilio	Pci
Sforza, Carlo	Pri
Sicignano, Ludovico	Pci
Siles, Nicola	Dc
Silipo, Luigi	Pci
Silonne, Ignazio	Psli
Simonini, Alberto	Psli
Spallicci, Aldo	Pri
Spano, Velio	Pci
Spataro, Giuseppe	Dc
Stampacchia, Vito Mario	Psi
Stella, Albino Ottavio	Dc
Storchi, Ferdinando	Dc
Sullo, Fiorentino	Dc

T

Taddia, Gherardo Ruggero	Psli
Tambroni Armaroli, Fernando	Dc
Targetti, Ferdinando	Psi
Taviani, Emilio Paolo	Dc
Tega, Renato	Psi
Terracini, Umberto	Pci
Terranova, Corrado	Dc
Tessitori, Tiziano	Dc
Tieri, Vincenzo	Uq
Titomanlio, Vittoria	Dc
Togliatti, Palmiro	Pci
Togni, Giuseppe	Dc
Tomba, Tullio	Psi
Tonello, Tommaso	Psi
Tonnetti, Giovanni	Psi
Tosato, Egidio	Dc

...rico	Dc	Viale, Ambrogio	Dc
...Condivi, Renato	Dc	Vicentini, Rodolfo	Dc
...lli, Secondo	Psli	Vigna, Oberdan	Psi
...oni, Roberto	Psli	Vigo, Gaetano	Dc
...Paolo	Psli	Vigorelli, Ezio	Psi
...chi, Michelangelo	Dc	Vilardi, Giuseppe	Uq
...Domenico	Udn	Villabruna, Bruno	Udn
...Martino	Uq	Villani, Ezio	Psli
...nelli, Michele Maria	Uq	Vinciguerra, Ireneo	Psi
...Umberto	Dc	Vischioni, Felice	Psi
...Alessandro	Dc	Visocchi, Guglielmo	Udn
		Volpe, Calogero	Dc
Z			
...Giovanni	Dc	Zaccagnini, Benigno	Dc
		Zagari, Mario	Psli
...Michele	Dc	Zanardi, Francesco	Psli
...Leo	Auto	Zannerini, Emilio	Psi
...Luigi	Udn	Zappelli, Luigi	Psi
...ma, Giustino	Dc	Zerbi, Tommaso	Dc
...Ezio	Dc	Zotta, Mario	Dc
...Antonino	Misto	Zuccarini, Oliviero	Pri
...Milziade	Uq		
...cchi, Olindo	Psi		
...Dante	Pdl		

SARY (Appendices I and II)

Autonomista
 Blocco nazionale della libertà
 Concentrazione democratica repubblicana
 Democrazia cristiana
 Fronte democratico progressista repubblicano
 Indipendente
 Movimento per l'indipendenza di Sicilia
 Gruppo parlamentare misto
 Partito comunista italiano
 Partito cristiano sociale
 Partito democratico del lavoro
 Partito repubblicano
 Partito sardo d'azione
 Partito socialista italiano
 Partito socialista italiano di unione proletaria
 Partito socialista dei lavoratori italiani
 Unione democratica nazionale
 Uomo qualunque

...P.L.Ballini (Ed.), 1946-1948: *Repubblica, Costituente, Costituzione*, Firenze, Edizioni Polistampa, 1998, Table 2,

APPENDIX II

Subcommissions Personnel

Subcommission 1 (Diritti e doveri dei cittadini)

[illegible]

Subcommission 2 (Organizzazione costituzionale dello Stato) [Split into 2 subcommittees]

President: Terracini	Dc	Pci	Psi	Uq	Bnl	Pri	Udn	Pdl	Up	Pda	Misto	Cdn	Fdpr	Psa
Secretary: Perrassi		Pci				Pri								
Ambrosini	Dc		Pci											
Amendola														
Bonomi (Paolo – Dc or Ivanoe – Misto)														
Bozzi							Udn							
Bulloni	Dc													
Calamandrei										Pda				
Canevari														
Cappi			Psi											
Castiglia			Psi											
Codacci Pisanelli	Dc								Up					
Conti														
De Michele	Dc					Pri	Udn							
Einaudi														
Fabbri														
Finocchiaro Aprile														
Fuschini	Dc										Mis	Cdn		
Grieco		Pci												
Lami Starnuti			Psi											
La Rocca		Pci												
Leone	Dc													
Lussu														Psa
Maffi		Pci												
Mannironi	Dc													
Merlin, Lina			Psi											
Mortati	Dc													
Nobile		Pci												
Patricolo							Udn							
Piccioni	Dc													
Porzio							Udn							
Ravagnan		Pci												
Rossi			Psi											
Targetti			Psi											
Tosato	Dc													
Uberti	Dc													
Vanoni	Dc													
Zuccarini						Pri								

Subcommission 3 (Lineamenti economici e sociali)

[illegible]

Comitato di Redazione (Comitato di 18)

Presidente: Ruini	Dc	Pci	Psi	Uq	Bnl	Pri	Udn	Pdl	Up	Pda	Misto	Cdn	Fdpr	Psa
Ambrosini	Dc									Pda				
Calamandrei														
Canevari			Psi											
Cevolotto								Pdl						
Dossetti	Dc													
Fanfani	Dc													
Fuschini	Dc													
Ghidini			Psi				Udn							
Grassi														
Grieco		Pci												
Marinaro					Bnl									
Moro	Dc					Pri								
Perassi														
Rossi, Paolo			Psi											
Terracini		Pci												
Togliatti		Pci												
Tupini	Dc													

Subcommissions: Source – Archivio della Camera dei Deputati, Busta 80, Fascicolo 3, p. 72.

APPENDIX III

ICAS¹: *Conclusioni cattoliche* for Church/State relations

The following 'conclusioni cattoliche' on Church/State relations were first submitted for the approval of the Vatican Secretariat of State and the directors of 'Civiltà cattolica'. Then copies were sent to President Umberto Tupini of Subcommittee 1 and Giuseppe Dossetti, its Dc spokesman. Thereafter, it was forwarded on 25th November to Monsignor Urbani, Secretary of the Commissione Episcopale per l'Alta Direzione dell'ACI, to Presidente Giuseppe Saragat of the Constituent Assembly and to Meuccio Ruini, President of the Commission of 75. The 'conclusioni', dated 21st November, 1946 read as follows:

- 1) Il far mancare nella Carta Costituzionale dello Stato l'invocazione preliminare del Nome di Dio e l'adesione ai grandi principi morali del Cristianesimo, sarebbe un ferire il sentimento religioso universale del popolo italiano e un offendere la coscienza comune che sta a base della civiltà attuale del popolo stesso. Lo Stato è l'organizzazione politico-giuridica della vita della nazione (la quale risulta dalla convivenza di persone umane) e perciò appunto deve essere l'interprete fedele della vita medesima, principalmente per ciò che riguarda le esigenze e le attività più essenziali e più elevate della persona umana, che sono la religiosità e la coscienza morale.
- 2) La Carta Costituzionale non può prescindere dal fatto che la Religione Cattolica Apostolica Romana è la religione della nazione italiana. Essa è professata dalla quasi totalità degli italiani; essa costituisce uno dei fattori principali della civiltà, della cultura e dell'unità italiana; e lo Stato ha l'obbligo di riconoscere praticamente e in modo degno le tradizioni storiche più fondamentali e più attuali della nazione. Lo stato deve quindi dare rilevanza giuridica a questo fatto con un positivo impegno costituzionale a svolgere la sua attività, nella legislazione e nella pratica amministrativa, con quel pieno ed effettivo rispetto alla Religione Cattolica, che è domandata dalla coscienza dei cattolici.
- 3) La Carta Costituzionale deve riconoscere e garantire per tutti i cittadini italiani, di qualsiasi fede od opinione, il principio della libertà di

¹ Istituto Cattolico per l'Attività Sociale.

coscienza e di culto, come un diritto naturale indispensabile alla persona umana per l'adempimento dei suoi doveri verso Dio.

Ma il principio costituzionale della libertà di coscienza e di culto non deve importare una equiparazione nelle determinazioni giuridiche relative alla vita e alle attività di tutti i gruppi o istituzioni sociali a finalità religiose non in contrasto con l'ordine pubblico.

Una tale equiparazione nell'ordinamento italiano sarebbe un non senso perché – se pur si voglia prescindere da ciò che per sé è dovuto alla Chiesa, ai suoi istituti, alle sue attività, nelle varie forme di attuazione del divino comando – il principio di giustizia non importa uguaglianza di regolamento per fenomeni socialmente disuguali (tanto più quando questi sono, come in Italia i gruppi sociali a finalità religiosa, enormemente disuguali tra loro per entità ed efficienza), ma regolamento adeguato alla diversità di tali fenomeni. La pace religiosa non può essere che l'effetto del congruo regime giuridico delle istituzioni confessionali, pur nel rispetto della libertà religiosa individuale. È dunque dovere e supremo interesse dello Stato non solo di conservare o meglio determinare la condizione giuridica opportuna per la vita degli istituti ecclesiastici, ma di cooperare attivamente con la Chiesa a che le finalità religioso-morali di questa siano realizzate.

Le quali finalità, mentre soddisfano le più alte esigenze della pubblica coscienza, assicurano il maggior bene anche temporale della collettività nazionale.

4) Per quanto ha riguardo agli specifici rapporti giuridici fra lo Stato e la Chiesa, la nuova Carta Costituzionale deve dichiarare la conservazione integrale dei Patti Lateranensi e sancire la non possibilità di modificazione di alcuno di essi, o di qualsiasi delle loro disposizioni, senza preventiva intesa e accordo con la Santa Sede.

Nei Patti Lateranensi – occorre tenerlo sempre presente – trova adeguata soluzione un annoso problema storico, proprio del popolo italiano; al quale popolo sarebbe estremamente dannoso se un siffatto problema venisse riaperto.²

² Full text appears in "L'i.c.a.s.", 1-15 December 1946, no. 20-21, p.4, *'Le fondamentali conclusioni dell'ICAS sugli attuali problemi sociali'*. Cited in Casella, *Cattolici e Costituente*, pp. 297-8.

APPENDIX IV
Costituzione della Repubblica Italiana
(published in the *Gazzetta Ufficiale* on 7th December 1947)
Cross-Referenced with
The Debates of the Constituent Assembly

Introduction

The aim of this work is primarily to facilitate my own research into the Catholic influence on the Debates of the Constituent Assembly, but I hope it will also be of benefit to those who wish to study, whether for professional reasons, academic research or personal interest, the Debates of the Constituent Assembly. This work acts as a cross-reference aid between the Articles of the Italian Constitution and the Debates of the Constituent Assembly including those of the three Subcommissions entrusted with the task of drawing up the Republican Constitution of 1948.

In the course of the Debates, topics were divided and sub-divided in different ways, leading to numerous changes in the numbering of the articles. I have listed in chronological order the debates that took place covering the substance of the articles as they appeared in their final form on 1st January, 1948. The reader will therefore be able to follow the development of the discussions leading up to the final version of each article.

Once the three Subcommissions had finished their initial deliberations, a draft constitution was produced for discussion in the full Constituent Assembly. The numbers that appear in brackets after the article numbers therefore refer to the corresponding article (or articles) of the Draft Constitution as presented on 31.01.1947. Where an article number is not followed by a number in brackets, it signifies that the article only appeared in the final version. The full transcript of the draft document can be seen on pages LVII-LXXIII in Volume I of *‘La Costituzione della Repubblica nei lavori preparatori della Assemblea Costituente’*. It is also worth bearing in mind that between January 1947 and January 1948, as the final version of each article was agreed, the article numbers mentioned in the debates refer to both the final article (where discussions are complete) and draft article (where discussions are still in progress).

Before the final decisions about exactly which topics were to be covered by each article, there was frequent overlap in the debates. In order to ensure that nothing is missed for the reader who wishes to follow the whole discussion of any article, I have made reference to the full debate under each relevant article. The same discussion will therefore appear under more than one article. Furthermore, when two or more Subcommissions or Subsections discussed the same article on the same day, the debates are listed in chronological order wherever possible.

The Subcommissions began debating topics on 26.07.1946. Prior to and on various occasions after this date, procedural matters regarding the appointment of Presidents and Secretaries, the work of the Subcommissions, draft proposals of topics the Constitution should cover, voting systems, the different constitutional models to be used etc. were discussed. These appear under the heading “General Discussions”.

Some of these “General Discussions” listed on page 3 of this Appendix, also include discussion of specific articles. Where such an overlap occurs, the entry will also be found under the relevant article.

Glossary

AP	Adunanza Plenaria (Full meeting of the 'Commission of 75')
S1	Subcommission 1
S2	Subcommission 2
S2i	Section One of Subcommission 2
S2ii	Section Two of Subcommission 2
S3	Subcommission 3
CA	Constituent Assembly (Full Session)

General Discussions on the Constitution

06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA
06.03.1947	Vol. I	pp. 203-230	CA
07.03.1947	Vol. I	pp. 233-257	CA
08.03.1947	Vol. I	pp. 259-285	CA
10.03.1947	Vol. I	pp. 287-309	CA
11.03.1947	Vol. I	pp. 313-339	CA
12.03.1947	Vol. I	pp. 341-358	CA
13.03.1947	Vol. I	pp. 359-391	CA
02.05.1947	Vol. II	pp. 1333-1359	CA
05.05.1947	Vol. II	pp. 1399-1426	CA
23.05.1947	Vol. III	pp. 1915-1947	CA
09.06.1947	Vol. III	pp. 2269-2275	CA
10.06.1947 pm	Vol. III	pp. 2291-2292	CA
11.06.1947 am	Vol. III	pp. 2293-2294	CA
13.06.1947 pm	Vol. III	pp. 2345-2346	CA
14.06.1947	Vol. III	pp. 2347-2366	CA
16.06.1947	Vol. III	pp. 2367-2368	CA
25.06.1947	Vol. III	p. 2387	CA
26.06.1947	Vol. III	pp. 2389-2391	CA
09.09.1947	Vol. IV	pp. 2761-2766	CA
22.12.1947 am	Vol. V	pp. 4579-4595	CA
22.12.1947 pm	Vol. V	pp. 4597-4608	CA

Principi Fondamentali

Art. 1. (1)

L'Italia è una Repubblica democratica fondata sul lavoro.

La sovranità appartiene al popolo, che la esercita nelle forme e nei limiti della Costituzione.

Debates:

26.07.1946	Vol. VIII	pp. 2073-2078	S3
03.09.1946	Vol. VII	pp. 895-909	S2
09.09.1946	Vol. VIII	pp. 2079-2084	S3
10.09.1946	Vol. VIII	pp. 2085-2089	S3
13.09.1946	Vol. VII	pp. 995-1005	S2
04.10.1946	Vol. VI	pp. 491-498	S1
08.10.1946	Vol. VI	pp. 499-509	S1
16.10.1946	Vol. VI	p. 562	S1
18.10.1946	Vol. VI	pp. 563-566	S1
28.11.1946	Vol. VI	pp. 727-736	S1
03.12.1946	Vol. VI	pp. 747-754	S1
19.12.1946	Vol. VI	pp. 807-814	S1
14.01.1947	Vol. VIII	pp. 2023-2028	S2ii
22.01.1947	Vol. VI	pp. 138-143	AP

24.01.1947	Vol. VI	pp. 161-164	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	p. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA
06.03.1947	Vol. I	pp. 203-230	CA
07.03.1947	Vol. I	pp. 233-257	CA
08.03.1947	Vol. I	pp. 259-285	CA
10.03.1947	Vol. I	pp. 287-309	CA
11.03.1947	Vol. I	pp. 313-339	CA
12.03.1947	Vol. I	pp. 341-358	CA
13.03.1947	Vol. I	pp. 359-391	CA
14.03.1947 pm	Vol. I	pp. 395-423	CA
15.03.1947 pm	Vol. I	pp. 427-451	CA
17.03.1947 pm	Vol. I	pp. 455-476	CA
20.03.1947	Vol. I	pp. 503-536	CA
21.03.1947	Vol. I	pp. 537-561	CA
22.03.1947 pm	Vol. I	pp. 565-587	CA
Discussion of individual articles begins today (22.03)			
08.05.1947	Vol. II	pp. 1497-1531	CA
12.05.1947 pm	Vol. II	pp. 1617-1656	CA
20.05.1947	Vol. III	pp. 1791-1827	CA

Art. 2. (6)

La Repubblica riconosce e garantisce i diritti inviolabili dell'uomo, sia come singolo sia nelle formazioni sociali ove si svolge la sua personalità e richiede l'adempimento dei doveri inderogabili di solidarietà politica, economica e sociale.

Debates:

26.07.1946	Vol. VIII	pp. 2073-2078	S3
09.09.1946	Vol. VI	pp. 316-324	S1
10.09.1946	Vol. VI	pp. 325-331	S1
11.09.1946	Vol. VI	pp. 333-342	S1
04.10.1946	Vol. VI	pp. 491-498	S1
19.12.1946	Vol. VI	pp. 807-814	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
10.03.1947	Vol. I	pp. 287-309	CA
11.03.1947	Vol. I	pp. 313-339	CA
12.03.1947	Vol. I	pp. 341-358	CA
13.03.1947	Vol. I	pp. 359-391	CA
14.03.1947 pm	Vol. I	pp. 395-423	CA
15.03.1947 pm	Vol. I	pp. 427-451	CA
17.03.1947 pm	Vol. I	pp. 455-476	CA
20.03.1947	Vol. I	pp. 503-536	CA
22.03.1947 pm	Vol. I	pp. 565-587	CA
24.03.1947 pm	Vol. I	pp. 591-612	CA
03.12.1947 pm	Vol. V	pp. 4319-4346	CA

Art. 3. (1,7)

Tutti i cittadini hanno pari dignità sociale e sono eguali davanti alla legge, senza distinzione di sesso, di razza, di lingua, di religione, di opinioni politiche, di condizioni personali e sociali.

È compito della Repubblica rimuovere gli ostacoli di ordine economico e sociale, che, limitando di fatto la libertà e l'eguaglianza dei cittadini, impediscono il pieno sviluppo della persona umana e l'effettiva partecipazione di tutti i lavoratori all'organizzazione politica, economica e sociale del Paese.

Debates:

26.07.1946	Vol. VIII	pp. 2073-2078	S3
11.09.1946	Vol. VI	pp. 333-342	S1
13.09.1946	Vol. VIII	pp. 2105-2112	S3
18.09.1946	Vol. VIII	pp. 2113-2119	S3
19.09.1946	Vol. VIII	pp. 2121-2126	S3
01.10.1946	Vol. VI	pp. 467-470	S1
02.10.1946	Vol. VI	pp. 471-478	S1
04.10.1946	Vol. VI	pp. 491-498	S1
03.12.1946	Vol. VI	pp. 747-754	S1
12.12.1946	Vol. VIII	pp. 1903-1911	S2ii
19.12.1946	Vol. VI	pp. 807-814	S1
24.01.1947	Vol. VI	p.167	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA
06.03.1947	Vol. I	pp. 203-230	CA
07.03.1947	Vol. I	pp. 233-257	CA
10.03.1947	Vol. I	pp. 287-309	CA
12.03.1947	Vol. I	pp. 341-358	CA
13.03.1947	Vol. I	pp. 359-391	CA
14.03.1947 pm	Vol. I	pp. 395-423	CA
15.03.1947 pm	Vol. I	pp. 427-451	CA
17.03.1947 pm	Vol. I	pp. 455-476	CA
18.03.1947 pm	Vol. I	pp. 479-502	CA
20.03.1947	Vol. I	pp. 503-536	CA
21.03.1947	Vol. I	pp. 537-561	CA
22.03.1947 pm	Vol. I	pp. 565-587	CA
Discussion of individual articles begins today			
24.03.1947 pm	Vol. I	pp. 591-612	CA
25.03.1947	Vol. I	pp. 613-664	CA
26.03.1947	Vol. I	pp. 665-692	CA
28.03.1947	Vol. I	pp. 721-742	CA
10.04.1947	Vol. I	pp. 753-784	CA
11.04.1947 am	Vol. I	pp. 785-801	CA
11.04.1947 pm	Vol. I	pp. 803-816	CA
12.04.1947 pm	Vol. I	pp. 825-846	CA
14.04.1947 am	Vol. I	pp. 847-865	CA
15.04.1947 am	Vol. I	pp. 887-911	CA
17.04.1947 am	Vol. II	pp. 941-962	CA
24.04.1947	Vol. II	pp. 1213-1243	CA
08.05.1947	Vol. II	pp. 1497-1531	CA

22.05.1947	Vol. III	pp. 1873-1914	CA
07.11.1947 pm	Vol. V	pp. 3693-3716	CA
26.11.1947 am	Vol. V	pp. 4093-4113	CA
28.11.1947 pm	Vol. V	pp. 4221-4251	CA

Art. 4. (31)

La Repubblica riconosce a tutti i cittadini il diritto al lavoro e promuove le condizioni che rendano effettivo questo diritto.

Ogni cittadino ha il dovere di svolgere, secondo le proprie possibilità e la propria scelta, una attività o una funzione che concorra al progresso materiale o spirituale della società.

Debates:

26.07.1946	Vol. VIII	pp. 2073-2078	S3
09.09.1946	Vol. VIII	pp. 2079-2084	S3
10.09.1946	Vol. VIII	pp. 2085-2089	S3
04.10.1946	Vol. VI	pp. 491-498	S1
08.10.1946	Vol. VI	pp. 499-509	S1
18.10.1946	Vol. VI	pp. 563-566	S1
15.11.1946	Vol. VI	pp. 685-698	S1
28.11.1946	Vol. VI	pp. 727-736	S1
19.12.1946	Vol. VI	pp. 807-814	S1
22.01.1947	Vol. VI	pp. 138-143	AP
24.01.1947	Vol. VI	p.167	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA
07.03.1947	Vol. I	pp. 233-257	CA
08.03.1947	Vol. I	pp. 259-285	CA
11.03.1947	Vol. I	pp. 313-339	CA
12.03.1947	Vol. I	pp. 341-358	CA
14.03.1947 pm	Vol. I	pp. 395-423	CA
15.03.1947 pm	Vol. I	pp. 427-451	CA
22.04.1947 pm	Vol. II	pp. 1117-1153	CA
06.05.1947 pm	Vol. II	pp. 1429-1467	CA
07.05.1947 pm	Vol. II	pp. 1472-1496	CA
08.05.1947	Vol. II	pp. 1497-1531	CA
09.05.1947 pm	Vol. II	pp. 1536-1558	CA
10.05.1947 pm	Vol. II	pp. 1581-1614	CA
12.05.1947 pm	Vol. II	pp. 1617-1656	CA
13.05.1947 am	Vol. II	pp. 1657-1682	CA
19.05.1947	Vol. II	pp. 1749-1790	CA
20.05.1947	Vol. III	pp. 1791-1827	CA
15.07.1947 pm	Vol. III	pp. 2627-2661	CA
11.11.1947 pm	Vol. V	pp. 3757-3788	CA
26.11.1947 am	Vol. V	pp. 4093-4113	CA

Art. 5. (106)

La Repubblica, una e indivisibile, riconosce e promuove le autonomie locali; attua nei servizi che dipendono dallo Stato il più ampio decentramento amministrativo; adegua i principi ed i metodi della sua legislazione alle esigenze dell'autonomia e del decentramento.

Debates:

(See also Articles 114 – 133)

06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
05.03.1947	Vol. I	pp. 167-200	CA
06.03.1947	Vol. I	pp. 203-230	CA
07.03.1947	Vol. I	pp. 233-257	CA
11.03.1947	Vol. I	pp. 313-339	CA
12.03.1947	Vol. I	pp. 341-358	CA
14.03.1947 pm	Vol. I	pp. 395-423	CA
18.03.1947 pm	Vol. I	pp. 479-502	CA
24.03.1947 pm	Vol. I	pp. 591-612	CA
03.06.1947	Vol. III	pp. 2103-2136	CA
04.06.1947 am	Vol. III	pp. 2137-2152	CA
04.06.1947 pm	Vol. III	pp. 2153-2177	CA
27.06.1947	Vol. III	pp. 2393-2434	CA
02.07.1947 pm	Vol. III	pp. 2471-2485	CA
04.12.1947 pm	Vol. V	pp. 4367-4399	CA

Art. 6.

La Repubblica tutela con apposite norme le minoranze linguistiche.

Debates:

06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
22.07.1947 am	Vol. III	pp. 2721-2727	CA

Art. 7. (5)

Lo Stato e la Chiesa cattolica sono, ciascuno nel proprio ordine, indipendenti e sovrani.

I loro rapporti sono regolati dai Patti Lateranensi. Le modificazioni dei Patti, accettate dalle due parti, non richiedono procedimento di revisione costituzionale.

Debates:

21.11.1946	Vol. VI	pp. 717-726	S1
03.12.1946	Vol. VI	pp. 747-754	S1
04.12.1946	Vol. VI	pp. 755-763	S1
05.12.1946	Vol. VI	p.768	S1
11.12.1946	Vol. VI	pp. 775-780	S1
13.12.1946	Vol. VIII	pp. 1913-1920	S2ii
18.12.1946	Vol. VI	pp. 781-793	S1
19.12.1946	Vol. VI	pp. 795-806	S1
23.01.1947	Vol. VI	pp. 145-159	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA

04.03.1947	Vol. I	pp. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA
06.03.1947	Vol. I	pp. 203-230	CA
07.03.1947	Vol. I	pp. 233-257	CA
08.03.1947	Vol. I	pp. 259-285	CA
10.03.1947	Vol. I	pp. 287-309	CA
11.03.1947	Vol. I	pp. 313-339	CA
12.03.1947	Vol. I	pp. 341-358	CA
13.03.1947	Vol. I	pp. 359-391	CA
14.03.1947 pm	Vol. I	pp. 395-423	CA
15.03.1947 pm	Vol. I	pp. 427-451	CA
17.03.1947 pm	Vol. I	pp. 455-476	CA
18.03.1947 pm	Vol. I	pp. 479-502	CA
20.03.1947	Vol. I	pp. 503-536	CA
21.03.1947	Vol. I	pp. 537-561	CA
25.03.1947	Vol. I	pp. 613-664	CA
26.03.1947	Vol. I	pp. 665-692	CA
28.03.1947	Vol. I	pp. 721-742	CA
12.04.1947 am	Vol. I	pp. 817-823	CA
12.04.1947 pm	Vol. I	pp. 825-846	CA
14.04.1947 am	Vol. I	pp. 847-865	CA

Art. 8. (5)

Tutte le confessioni religiose sono egualmente libere davanti alla legge.

Le confessioni religiose diverse dalla cattolica hanno diritto di organizzarsi secondo i propri statuti, in quanto non contrastino con l'ordinamento giuridico italiano.

I loro rapporti con lo Stato sono regolati per legge sulla base di intese con le relative rappresentanze.

Debates:

26.07.1946	Vol. VIII	pp. 2073-2078	S3
13.12.1946	Vol. VIII	pp. 1913-1920	S2ii
19.12.1946	Vol. VI	pp. 795-806	S1
24.01.1947	Vol. VI	pp. 166-167	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
08.03.1947	Vol. I	pp. 259-285	CA
12.03.1947	Vol. I	pp. 341-358	CA
13.03.1947	Vol. I	pp. 359-391	CA
17.03.1947 pm	Vol. I	pp. 455-476	CA
18.03.1947 pm	Vol. I	pp. 479-502	CA
20.03.1947	Vol. I	pp. 503-536	CA
21.03.1947	Vol. I	pp. 537-561	CA
25.03.1947	Vol. I	pp. 613-664	CA
26.03.1947	Vol. I	pp. 665-692	CA
28.03.1947	Vol. I	pp. 721-742	CA
12.04.1947 am	Vol. I	pp. 817-823	CA
12.04.1947 pm	Vol. I	pp. 825-846	CA

Art. 9. (29)

La Repubblica promuove lo sviluppo della cultura e la ricerca scientifica e tecnica.
Tutela il paesaggio e il patrimonio storico e artistico della Nazione.

Debates:

11.12.1946	Vol. VI	pp. 775-780	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
30.04.1947	Vol. II	pp. 1301-1332	CA
04.06.1947 pm	Vol. III	pp. 2153-2177	CA

Art. 10. (3, 11)

L'ordinamento giuridico italiano si conforma alle norme del diritto internazionale generalmente riconosciute.

La condizione giuridica dello straniero è regolata dalla legge in conformità delle norme e dei trattati internazionali.

Lo straniero, al quale sia impedito nel suo paese l'effettivo esercizio delle libertà democratiche garantite dalla Costituzione italiana, ha diritto d'asilo nel territorio della Repubblica, secondo le condizioni stabilite dalla legge.

Non è ammessa l'estradizione dello straniero per reati politici.

Debates:

01.10.1946	Vol. VI	pp. 467-470	S1
02.10.1946	Vol. VI	p. 478	S1
04.12.1946	Vol. VI	pp. 755-763	S1
11.12.1946	Vol. VI	pp. 775-780	S1
13.12.1946	Vol. VIII	pp. 1913-1920	S2ii
24.01.1947	Vol. VI	pp. 164-166	AP
24.01.1947	Vol. VI	pp. 169-172	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
11.03.1947	Vol. I	pp. 313-339	CA
12.03.1947	Vol. I	pp. 341-358	CA
14.03.1947 pm	Vol. I	pp. 395-423	CA
15.03.1947 pm	Vol. I	pp. 427-451	CA
17.03.1947 pm	Vol. I	pp. 455-476	CA
24.03.1947 pm	Vol. I	pp. 591-612	CA
26.03.1947	Vol. I	pp. 665-692	CA
27.03.1947	Vol. I	pp. 695-718	CA
28.03.1947	Vol. I	pp. 721-742	CA
11.04.1947 am	Vol. I	pp. 785-801	CA
17.04.1947 am	Vol. II	pp. 941-962	CA
20.05.1947	Vol. III	pp. 1791-1827	CA

Art. 11. (4)

L'Italia ripudia la guerra come strumento di offesa alla libertà degli altri popoli e come mezzo di risoluzione delle controversie internazionali; consente, in condizioni di parità con gli altri Stati, alle limitazioni di sovranità necessarie ad un ordinamento che assicuri la pace e la giustizia fra le Nazioni; promuove e favorisce le organizzazioni internazionali rivolte a tale scopo.

Debates:

03.12.1946	Vol. VI	pp. 747-754	S1
24.01.1947	Vol. VI	p.166	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
05.03.1947	Vol. I	pp. 167-200	CA
08.03.1947	Vol. I	pp. 259-285	CA
10.03.1947	Vol. I	pp. 287-309	CA
11.03.1947	Vol. I	pp. 313-339	CA
12.03.1947	Vol. I	pp. 341-358	CA
13.03.1947	Vol. I	pp. 359-391	CA
14.03.1947 pm	Vol. I	pp. 395-423	CA
15.03.1947 pm	Vol. I	pp. 427-451	CA
17.03.1947 pm	Vol. I	pp. 455-476	CA
18.03.1947 pm	Vol. I	pp. 479-502	CA
20.03.1947	Vol. I	pp. 503-536	CA
24.03.1947 pm	Vol. I	pp. 591-612	CA
20.05.1947	Vol. III	pp. 1791-1827	CA
21.10.1947 am	Vol. IV	pp. 3387-3401	CA

Art. 12. (2)

La bandiera della Repubblica è il tricolore italiano: verde bianco e rosso, a tre bande verticali di eguali dimensioni.

Debates:

03.12.1946	Vol. VI	pp. 747-754	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
12.03.1947	Vol. I	pp. 341-358	CA
24.03.1947 pm	Vol. I	pp. 591-612	CA
22.04.1947 am	Vol. II	pp. 1105-1116	CA

PARTE I

Diritti e Doveri dei Cittadini

TITOLO I

Rapporti Civili

Art. 13. (8)

La libertà personale è inviolabile.

Non è ammessa forma alcuna di detenzione, di ispezione o perquisizione personale, né qualsiasi altra restrizione della libertà personale, se non per atto motivato dall'autorità giudiziaria e nei soli casi e modi previsti dalla legge.

In casi eccezionali di necessità ed urgenza, indicati tassativamente dalla legge, l'autorità di pubblica sicurezza può adottare provvedimenti provvisori, che devono essere comunicati entro quarantotto ore alla autorità giudiziaria e, se questa non li convalida nelle successive quarantotto ore, si intendono revocati e restano privi di ogni effetto.

È punita ogni violenza fisica e morale sulle persone comunque sottoposte a restrizioni di libertà.

La legge stabilisce i limiti massimi della carcerazione preventiva.

Debates:

12.09.1946	Vol. VI	pp. 343-352	S1
17.09.1946	Vol. VI	pp. 353-360	S1
10.12.1946	Vol. VI	pp. 769-773	S1
19.12.1946	Vol. VI	pp. 807-814	S1
24.01.1947	Vol. VI	p.168	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
05.03.1947	Vol. I	pp. 167-200	CA
08.03.1947	Vol. I	pp. 259-285	CA
12.03.1947	Vol. I	pp. 341-358	CA
26.03.1947	Vol. I	pp. 665-692	CA
27.03.1947	Vol. I	pp. 695-718	CA
28.03.1947	Vol. I	pp. 721-742	CA
29.03.1947	Vol. I	pp. 743-751	CA
10.04.1947	Vol. I	pp. 753-784	CA
14.04.1947 am	Vol. I	pp. 847-865	CA
15.04.1947 am	Vol. I	pp. 887-911	CA
26.11.1947 pm	Vol. V	pp. 4115-4139	CA
27.11.1947 am	Vol. V	pp. 4141-4156	CA

Art. 14.

Il domicilio è inviolabile.

Non vi si possono eseguire ispezioni o perquisizioni o sequestri, se non nei casi e modi stabiliti dalla legge secondo le garanzie prescritte per la tutela della libertà personale.

Gli accertamenti e le ispezioni per motivi di sanità e di incolumità pubblica o a fini economici e fiscali sono regolati da leggi speciali.

Debates:

19.09.1946	Vol. VI	pp. 375-383	S1
24.01.1947	Vol. VI	p.168	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
05.03.1947	Vol. I	pp. 167-200	CA
12.03.1947	Vol. I	pp. 341-358	CA
26.03.1947	Vol. I	pp. 665-692	CA
10.04.1947	Vol. I	pp. 753-784	CA
26.11.1947 pm	Vol. V	pp. 4115-4139	CA

Art. 15. (9)

La libertà e la segretezza della corrispondenza e di ogni altra forma di comunicazione sono inviolabili.

La loro limitazione può avvenire soltanto per atto motivato dell'autorità giudiziaria con le garanzie stabilite dalla legge.

Debates:

20.09.1946	Vol. VI	p. 390	S1
21.09.1946	Vol. VI	p. 391	S1
24.01.1947	Vol. VI	p. 168	AP
28.01.1947	Vol. VI	p. 203	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
05.03.1947	Vol. I	pp. 167-200	CA
26.03.1947	Vol. I	pp. 665-692	CA
27.03.1947	Vol. I	pp. 695-718	CA
10.04.1947	Vol. I	pp. 753-784	CA
11.04.1947 am	Vol. I	pp. 785-801	CA

Art. 16. (10)

Ogni cittadino può circolare e soggiornare liberamente in qualsiasi parte del territorio nazionale, salvo le limitazioni che la legge stabilisce in via generale per motivi di sanità o di sicurezza. Nessuna restrizione può essere determinata da ragioni politiche. Ogni cittadino è libero di uscire dal territorio della Repubblica e di rientrarvi, salvo gli obblighi di legge.

Debates:

20.09.1946	Vol. VI	pp. 385-390	S1
24.09.1946	Vol. VIII	pp. 2135-2138	S3
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
26.03.1947	Vol. I	pp. 665-692	CA
27.03.1947	Vol. I	pp. 695-718	CA
28.03.1947	Vol. I	pp. 721-742	CA
11.04.1947 am	Vol. I	pp. 785-801	CA
11.04.1947 pm	Vol. I	pp. 803-816	CA
15.04.1947 am	Vol. I	pp. 887-911	CA
05.12.1947 pm	Vol. V	pp. 4417-4452	CA

Art. 17. (12)

I cittadini hanno diritto di riunirsi pacificamente e senz'armi.

Per le riunioni, anche in luogo aperto al pubblico, non è richiesto preavviso.

Delle riunioni in luogo pubblico deve essere dato preavviso alle autorità, che possono vietarle soltanto per comprovati motivi di sicurezza o di incolumità pubblica.

Debates:

25.09.1946	Vol. VI	pp. 421-422	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
06.03.1947	Vol. I	pp. 203-230	CA
26.03.1947	Vol. I	pp. 665-692	CA
27.03.1947	Vol. I	pp. 695-718	CA
28.03.1947	Vol. I	pp. 721-742	CA
11.04.1947 pm	Vol. I	pp. 803-816	CA

Art. 18. (13)

I cittadini hanno diritto di associarsi liberamente, senza autorizzazione, per fini che non sono vietati ai singoli dalla legge penale.

Sono proibite le associazioni segrete e quelle che perseguono, anche indirettamente, scopi politici mediante organizzazioni di carattere militare.

Debates:

25.09.1946	Vol. VI	pp. 422-429	S1
10.10.1946	Vol. VI	pp. 519-522	S1
11.10.1946	Vol. VI	pp. 523-534	S1
10.12.1946	Vol. VI	pp. 769-773	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
08.03.1947	Vol. I	pp. 259-285	CA
12.03.1947	Vol. I	pp. 341-358	CA
18.03.1947 pm	Vol. I	pp. 479-502	CA
26.03.1947	Vol. I	pp. 665-692	CA
27.03.1947	Vol. I	pp. 695-718	CA
11.04.1947 pm	Vol. I	pp. 803-816	CA
12.04.1947 pm	Vol. I	pp. 825-846	CA
07.05.1947 pm	Vol. II	pp. 1472-1496	CA
21.05.1947	Vol. III	pp. 1829-1871	CA
22.05.1947	Vol. III	pp. 1873-1914	CA
08.11.1947	Vol. V	pp. 3717-3739	CA

Art. 19. (14)

Tutti hanno diritto di professare liberamente la propria fede religiosa in qualsiasi forma, individuale o associata, di farne propaganda e di esercitarne in privato o in pubblico il culto, purché non si tratti di riti contrari al buon costume.

Debates:

18.12.1946	Vol. VI	pp. 781-793	S1
19.12.1946	Vol. VI	pp. 795-806	S1
19.12.1946	Vol. VI	pp. 807-814	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
13.03.1947	Vol. I	pp. 359-391	CA
14.03.1947 pm	Vol. I	pp. 395-423	CA
20.03.1947	Vol. I	pp. 503-536	CA
21.03.1947	Vol. I	pp. 537-561	CA
25.03.1947	Vol. I	pp. 613-664	CA
26.03.1947	Vol. I	pp. 665-692	CA
27.03.1947	Vol. I	pp. 695-718	CA
28.03.1947	Vol. I	pp. 721-742	CA
12.04.1947 am	Vol. I	pp. 817-823	CA
12.04.1947 pm	Vol. I	pp. 825-846	CA
17.04.1947 am	Vol. II	pp. 941-962	CA

Art. 20. (15)

Il carattere ecclesiastico e il fine di religione o di culto d'una associazione od istituzione non possono essere causa di speciali limitazioni legislative, né di speciali gravami fiscali per la sua costituzione, capacità giuridica e ogni forma di attività.

Debates:

18.12.1946	Vol. VI	pp. 781-793	S1
19.12.1946 am	Vol. VI	pp. 795-806	S1
19.12.1946 pm	Vol. VI	pp. 807-814	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
13.03.1947	Vol. I	pp. 359-391	CA
14.03.1947 pm	Vol. I	pp. 395-423	CA
26.03.1947	Vol. I	pp. 665-692	CA
12.04.1947 pm	Vol. I	pp. 825-846	CA
14.04.1947 am	Vol. I	pp. 847-865	CA

Art. 21. (16)

Tutti hanno diritto di manifestare liberamente il proprio pensiero con la parola, lo scritto e ogni altro mezzo di diffusione.

La stampa non può essere soggetta ad autorizzazioni o censure.

Si può procedere a sequestro soltanto per atto motivato dell'autorità giudiziaria nel caso di delitti, per i quali la legge sulla stampa espressamente lo autorizzi, o nel caso di violazione delle norme che la legge stessa prescriva per l'indicazione dei responsabili.

In tali casi, quando vi sia assoluta urgenza e non sia possibile il tempestivo intervento dell'autorità giudiziaria, il sequestro della stampa periodica può essere eseguito da ufficiali di polizia giudiziaria, che devono immediatamente, e non mai oltre ventiquattro ore, fare denuncia all'autorità giudiziaria. Se questa non lo convalida nelle ventiquattro ore successive, il sequestro si intende revocato e privo d'ogni effetto.

La legge può stabilire, con norme di carattere generale, che siano resi noti i mezzi di finanziamento della stampa periodica.

Sono vietate le pubblicazioni a stampa, gli spettacoli e tutte le altre manifestazioni contrarie al buon costume. La legge stabilisce provvedimenti adeguati a prevenire e a reprimere le violazioni.

Debates:

26.09.1946	Vol. VI	pp. 431-441	S1
27.09.1946	Vol. VI	pp. 443-455	S1
01.10.1946	Vol. VI	pp. 457-460	S1
12.12.1946	Vol. VIII	pp. 1903-1911	S2ii
25.01.1947	Vol. VI	pp. 173-176	AP
28.01.1947	Vol. VI	pp. 205-206	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
05.03.1947	Vol. I	pp. 167-200	CA
06.03.1947	Vol. I	pp. 203-230	CA
08.03.1947	Vol. I	pp. 259-285	CA
26.03.1947	Vol. I	pp. 665-692	CA
27.03.1947	Vol. I	pp. 695-718	CA
28.03.1947	Vol. I	pp. 721-742	CA
10.04.1947	Vol. I	pp. 753-784	CA
12.04.1947 pm	Vol. I	pp. 825-846	CA
14.04.1947 am	Vol. I	pp. 847-865	CA
14.04.1947 pm	Vol. I	pp. 867-885	CA
17.04.1947 am	Vol. II	pp. 941-962	CA
22.05.1947	Vol. III	pp. 1873-1914	CA
26.11.1947 pm	Vol. V	pp. 4115-4139	CA

Art. 22. (17)

Nessuno può essere privato, per motivi politici, della capacità giuridica, della cittadinanza, del nome.

Debates:

21.09.1946	Vol. VI	pp. 391-399	S1
24.09.1946	Vol. VI	pp. 401-413	S1
25.09.1946	Vol. VI	pp. 413-421	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
27.03.1947	Vol. I	pp. 695-718	CA
28.03.1947	Vol. I	pp. 721-742	CA
14.04.1947 pm	Vol. I	pp. 867-885	CA
15.04.1947 am	Vol. I	pp. 887-911	CA

Art. 23. (18)

Nessuna prestazione personale o patrimoniale può essere imposta se non in base alla legge.

Debates:

19.11.1946	Vol. VI	pp. 699-707	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
14.04.1947 pm	Vol. I	pp. 867-885	CA
15.04.1947 am	Vol. I	pp. 887-911	CA
08.05.1947	Vol. II	pp. 1497-1531	CA

Art. 24. (19, 22)

Tutti possono agire in giudizio per la tutela dei propri diritti e interessi legittimi.

La difesa è diritto inviolabile in ogni stato e grado del procedimento.

Sono assicurati ai non abbienti, con appositi istituti, i mezzi per agire e difendersi davanti ad ogni giurisdizione.

La legge determina le condizioni e i modi per la riparazione degli errori giudiziari.

Debates:

17.09.1946	Vol. VI	pp. 360-366	S1
03.12.1946	Vol. VI	pp. 747-754	S1
12.12.1946	Vol. VIII	pp. 1903-1911	S2ii
14.12.1946	Vol. VIII	pp. 1921-1927	S2ii
11.01.1947	Vol. VIII	pp. 2013-2016	S2ii
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
27.03.1947	Vol. I	pp. 695-718	CA
28.03.1947	Vol. I	pp. 721-742	CA
14.04.1947 am	Vol. I	pp. 847-865	CA
15.04.1947 am	Vol. I	pp. 887-911	CA
15.04.1947 pm	Vol. I	pp. 913-937	CA
24.11.1947 am	Vol. V	pp. 4007-4021	CA
26.11.1947 pm	Vol. V	pp. 4115-4139	CA
02.12.1947	Vol. V	pp. 4277-4303	CA

Art. 25. (20)

Nessuno può essere distolto dal giudice naturale precostituito per legge.

Nessuno può essere punito se non in forza di una legge che sia entrata in vigore prima del fatto commesso.

Nessuno può essere sottoposto a misure di sicurezza se non nei casi previsti dalla legge.

Debates:

17.09.1946	Vol. VI	pp. 360-366	S1
18.09.1946	Vol. VI	pp. 367-374	S1
12.12.1946	Vol. VIII	pp. 1903-1911	S2ii
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
08.03.1947	Vol. I	pp. 259-285	CA
26.03.1947	Vol. I	pp. 665-692	CA
27.03.1947	Vol. I	pp. 695-718	CA
15.04.1947 am	Vol. I	pp. 887-911	CA
24.11.1947 am	Vol. V	pp. 4007-4021	CA
02.12.1947	Vol. V	pp. 4277-4303	CA

Art. 26.

L'estradizione del cittadino può essere consentita soltanto ove sia espressamente prevista dalle convenzioni internazionali. Non può in alcun caso essere ammessa per reati politici.

Debates:

06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
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Art. 27. (21)

La responsabilit  penale   personale.

L'imputato non   considerato colpevole sino alla condanna definitiva.

Le pene non possono consistere in trattamenti contrari al senso di umanit  e devono tendere alla rieducazione del condannato. Non   ammessa la pena di morte, se non nei casi previsti dalle leggi militari di guerra.

Debates:

17.09.1946	Vol. VI	pp. 360-366	S1
18.09.1946	Vol. VI	pp. 367-374	S1
19.09.1946	Vol. VI	pp. 375-383	S1
10.12.1946	Vol. VI	pp. 769-773	S1
12.12.1946	Vol. VIII	pp. 1903-1911	S2ii
25.01.1947	Vol. VI	pp. 180-185	AP
25.01.1947	Vol. VI	pp. 187-189	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
05.03.1947	Vol. I	pp. 167-200	CA
06.03.1947	Vol. I	pp. 203-230	CA
08.03.1947	Vol. I	pp. 259-285	CA
26.03.1947	Vol. I	pp. 665-692	CA
27.03.1947	Vol. I	pp. 695-718	CA
28.03.1947	Vol. I	pp. 721-742	CA
29.03.1947	Vol. I	pp. 743-751	CA
10.04.1947	Vol. I	pp. 753-784	CA
15.04.1947 am	Vol. I	pp. 887-911	CA
08.11.1947	Vol. V	pp. 3717-3739	CA
02.12.1947	Vol. V	pp. 4277-4303	CA
05.12.1947 pm	Vol. V	pp. 4417-4452	CA

Art. 28. (22)

I funzionari e i dipendenti dello Stato e degli enti pubblici sono direttamente responsabili, secondo le leggi penali, civili e amministrative, degli atti compiuti in violazione di diritti. In tali casi la responsabilit  civile si estende allo Stato e agli enti pubblici.

Debates:

01.10.1946	Vol. VI	pp. 460-467	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
26.03.1947	Vol. I	pp. 665-692	CA
27.03.1947	Vol. I	pp. 695-718	CA
28.03.1947	Vol. I	pp. 721-742	CA

10.04.1947	Vol. I	pp. 753-784	CA
14.04.1947 pm	Vol. I	pp. 867-885	CA
15.04.1947 am	Vol. I	pp. 887-911	CA
15.04.1947 pm	Vol. I	pp. 913-937	CA

TITOLO II

Rapporti Etico-Sociali

Art. 29. (23, 24)

La Repubblica riconosce i diritti della famiglia come società naturale fondata sul matrimonio.

Il matrimonio è ordinato sull'eguaglianza morale e giuridica dei coniugi, con i limiti stabiliti dalla legge a garanzia dell'unità familiare.

Debates:

26.07.1946	Vol. VIII	pp. 2073-2078	S3
13.09.1946	Vol. VIII	pp. 2105-2112	S3
18.09.1946	Vol. VIII	pp. 2113-2119	S3
19.09.1946	Vol. VIII	pp. 2121-2126	S3
30.10.1946	Vol. VI	pp. 630-636	S1
05.11.1946	Vol. VI	pp. 637-641	S1
06.11.1946	Vol. VI	pp. 643-654	S1
07.11.1946	Vol. VI	pp. 655-662	S1
12.11.1946	Vol. VI	pp. 663-668	S1
13.11.1946	Vol. VI	pp. 669-676	S1
15.01.1947	Vol. VI	pp. 101-106	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA
06.03.1947	Vol. I	pp. 203-230	CA
07.03.1947	Vol. I	pp. 233-257	CA
08.03.1947	Vol. I	pp. 259-285	CA
11.03.1947	Vol. I	pp. 313-339	CA
18.03.1947 pm	Vol. I	pp. 479-502	CA
15.04.1947 pm	Vol. I	pp. 913-937	CA
17.04.1947 am	Vol. II	pp. 941-962	CA
17.04.1947 pm	Vol. II	pp. 963-983	CA
18.04.1947 am	Vol. II	pp. 985-993	CA
18.04.1947 pm	Vol. II	pp. 996-1024	CA
19.04.1947 pm	Vol. II	pp. 1025-1054	CA
21.04.1947 am	Vol. II	pp. 1055-1071	CA
21.04.1947 pm	Vol. II	pp. 1073-1104	CA
22.04.1947 am	Vol. II	pp. 1105-1116	CA
22.04.1947 pm	Vol. II	pp. 1117-1153	CA
23.04.1947	Vol. II	pp. 1155-1211	CA
08.05.1947	Vol. II	pp. 1497-1531	CA
10.05.1947 am	Vol. II	pp. 1559-1580	CA

Art. 30. (25)

È dovere e diritto dei genitori mantenere, istruire ed educare i figli, anche se nati fuori del matrimonio.

Nei casi di incapacità dei genitori, la legge provvede a che siano assolti i loro compiti.

La legge assicura ai figli nati fuori del matrimonio ogni tutela giuridica e sociale, compatibile con i diritti dei membri della famiglia legittima.

La legge detta le norme e i limiti per la ricerca della paternità.

Debates:

26.07.1946	Vol. VIII	pp. 2073-2078	S3
13.09.1946	Vol. VIII	pp. 2105-2112	S3
18.09.1946	Vol. VIII	pp. 2113-2119	S3
19.09.1946	Vol. VIII	pp. 2121-2126	S3
20.09.1946	Vol. VIII	pp. 2127-2133	S3
22.10.1946	Vol. VI	pp. 576-585	S1
23.10.1946	Vol. VI	pp. 588-598	S1
30.10.1946	Vol. VI	pp. 630-636	S1
05.11.1946	Vol. VI	pp. 637-641	S1
06.11.1946	Vol. VI	pp. 643-654	S1
07.11.1946	Vol. VI	pp. 655-662	S1
12.11.1946	Vol. VI	pp. 663-668	S1
13.11.1946	Vol. VI	pp. 669-676	S1
16.01.1947	Vol. VI	pp. 111-115	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA
06.03.1947	Vol. I	pp. 203-230	CA
15.04.1947 pm	Vol. I	pp. 913-937	CA
17.04.1947 am	Vol. II	pp. 941-962	CA
17.04.1947 pm	Vol. II	pp. 963-983	CA
18.04.1947 am	Vol. II	pp. 985-993	CA
18.04.1947 pm	Vol. II	pp. 996-1024	CA
19.04.1947 pm	Vol. II	pp. 1025-1054	CA
21.04.1947 am	Vol. II	pp. 1055-1071	CA
21.04.1947 pm	Vol. II	pp. 1073-1104	CA
22.04.1947 am	Vol. II	pp. 1105-1116	CA
22.04.1947 pm	Vol. II	pp. 1117-1153	CA
23.04.1947	Vol. II	pp. 1155-1211	CA
08.05.1947	Vol. II	pp. 1497-1531	CA
10.05.1947 am	Vol. II	pp. 1559-1580	CA

Art. 31. (23, 25)

La Repubblica agevola con misure economiche e altre provvidenze la formazione della famiglia e l'adempimento dei compiti relativi, con particolare riguardo alle famiglie numerose.

Protegge la maternità, l'infanzia e la gioventù, favorendo gli istituti necessari a tale scopo.

Debates:

26.07.1946	Vol. VIII	pp. 2073-2078	S3
13.09.1946	Vol. VIII	pp. 2105-2112	S3
18.09.1946	Vol. VIII	pp. 2113-2119	S3
19.09.1946	Vol. VIII	pp. 2121-2126	S3
30.10.1946	Vol. VI	pp. 630-636	S1
05.11.1946	Vol. VI	pp. 637-641	S1
06.11.1946	Vol. VI	pp. 643-654	S1
07.11.1946	Vol. VI	pp. 655-662	S1
12.11.1946	Vol. VI	pp. 663-668	S1
13.11.1946	Vol. VI	pp. 669-676	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
15.04.1947 pm	Vol. I	pp. 913-937	CA
17.04.1947 am	Vol. II	pp. 941-962	CA
17.04.1947 pm	Vol. II	pp. 963-983	CA
18.04.1947 am	Vol. II	pp. 985-993	CA
18.04.1947 pm	Vol. II	pp. 996-1024	CA
19.04.1947 pm	Vol. II	pp. 1025-1054	CA
21.04.1947 am	Vol. II	pp. 1055-1071	CA
21.04.1947 pm	Vol. II	pp. 1073-1104	CA
22.04.1947 am	Vol. II	pp. 1105-1116	CA
22.04.1947 pm	Vol. II	pp. 1117-1153	CA
23.04.1947	Vol. II	pp. 1155-1211	CA
08.05.1947	Vol. II	pp. 1497-1531	CA
10.05.1947 am	Vol. II	pp. 1559-1580	CA

Art. 32. (26)

La Repubblica tutela la salute come fondamentale diritto dell'individuo e interesse della collettività, e garantisce cure gratuite agli indigenti.

Nessuno può essere obbligato a un determinato trattamento sanitario se non per disposizione di legge. La legge non può in nessun caso violare i limiti imposti dal rispetto della persona umana.

Debates:

25.01.1947	Vol. VI	p. 180	AP
28.01.1947	Vol. VI	pp. 203-205	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
08.03.1947	Vol. I	pp. 259-285	CA
27.03.1947	Vol. I	pp. 695-718	CA
17.04.1947 am	Vol. II	pp. 941-962	CA
19.04.1947 pm	Vol. II	pp. 1025-1054	CA
21.04.1947 am	Vol. II	pp. 1055-1071	CA
21.04.1947 pm	Vol. II	pp. 1073-1104	CA
22.04.1947 pm	Vol. II	pp. 1117-1153	CA
23.04.1947	Vol. II	pp. 1155-1211	CA
24.04.1947	Vol. II	pp. 1213-1243	CA
07.05.1947 pm	Vol. II	pp. 1472-1496	CA

Art. 33. (27)

L'arte e la scienza sono libere e libero ne è l'insegnamento.

La Repubblica detta le norme generali sull'istruzione ed istituisce scuole statali per tutti gli ordini e gradi.

Enti e privati hanno il diritto di istituire scuole ed istituti di educazione, senza oneri per lo Stato.

La legge, nel fissare i diritti e gli obblighi delle scuole non statali che chiedono la parità, deve assicurare ad esse piena libertà e ai loro alunni un trattamento scolastico equipollente a quello degli alunni di scuole statali.

È prescritto un esame di Stato per l'ammissione ai vari ordini e gradi di scuole o per la conclusione di essi e per l'abilitazione all'esercizio professionale.

Le istituzioni di alta cultura, università ed accademie, hanno il diritto di darsi ordinamenti autonomi nei limiti stabiliti dalle leggi dello Stato.

Debates:

19.09.1946	Vol. VIII	pp. 2121-2126	S3
20.09.1946	Vol. VIII	pp. 2127-2133	S3
18.10.1946	Vol. VI	pp. 567-573	S1
22.10.1946	Vol. VI	pp. 576-585	S1
23.10.1946	Vol. VI	pp. 588-598	S1
24.10.1946	Vol. VI	pp. 599-608	S1
29.10.1946	Vol. VI	pp. 609-620	S1
30.10.1946	Vol. VI	pp. 621-629	S1
19.12.1946	Vol. VI	pp. 807-814	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA
10.03.1947	Vol. I	pp. 287-309	CA
13.03.1947	Vol. I	pp. 359-391	CA
25.03.1947	Vol. I	pp. 613-664	CA
28.03.1947	Vol. I	pp. 721-742	CA
29.03.1947	Vol. I	pp. 743-751	CA
17.04.1947 am	Vol. II	pp. 941-962	CA
17.04.1947 pm	Vol. II	pp. 963-983	CA
18.04.1947 am	Vol. II	pp. 985-993	CA
18.04.1947 pm	Vol. II	pp. 996-1024	CA
19.04.1947 pm	Vol. II	pp. 1025-1054	CA
21.04.1947 am	Vol. II	pp. 1055-1071	CA
21.04.1947 pm	Vol. II	pp. 1073-1104	CA
22.04.1947 am	Vol. II	pp. 1105-1116	CA
22.04.1947 pm	Vol. II	pp. 1117-1153	CA
23.04.1947	Vol. II	pp. 1155-1211	CA
24.04.1947	Vol. II	pp. 1213-1243	CA
28.04.1947	Vol. II	pp. 1245-1270	CA
29.04.1947	Vol. II	pp. 1271-1299	CA
30.04.1947	Vol. II	pp. 1301-1332	CA
22.05.1947	Vol. III	pp. 1873-1914	CA
04.07.1947 pm	Vol. III	pp. 2499-2524	CA
08.07.1947	Vol. III	pp. 2529-2550	CA

Art. 34. (28)

La scuola è aperta a tutti.

L'istruzione inferiore, impartita per almeno otto anni, è obbligatoria e gratuita.

I capaci e meritevoli, anche se privi di mezzi, hanno diritto di raggiungere i gradi più alti degli studi.

La Repubblica rende effettivo questo diritto con borse di studio, assegni alle famiglie ed altre provvidenze, che devono essere attribuite per concorso.

Debates:

19.09.1946	Vol. VIII	pp. 2121-2126	S3
20.09.1946	Vol. VIII	pp. 2127-2133	S3
18.10.1946	Vol. VI	pp. 567-573	S1
22.10.1946	Vol. VI	pp. 576-585	S1
23.10.1946	Vol. VI	pp. 588-598	S1
24.10.1946	Vol. VI	pp. 599-608	S1
29.10.1946	Vol. VI	pp. 609-620	S1
30.10.1946	Vol. VI	pp. 621-629	S1
11.12.1946	Vol. VI	pp. 775-780	S1
19.12.1946	Vol. VI	pp. 807-814	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA
08.03.1947	Vol. I	pp. 259-285	CA
10.03.1947	Vol. I	pp. 287-309	CA
25.03.1947	Vol. I	pp. 613-664	CA
17.04.1947 am	Vol. II	pp. 941-962	CA
17.04.1947 pm	Vol. II	pp. 963-983	CA
18.04.1947 am	Vol. II	pp. 985-993	CA
18.04.1947 pm	Vol. II	pp. 996-1024	CA
19.04.1947 pm	Vol. II	pp. 1025-1054	CA
21.04.1947 am	Vol. II	pp. 1055-1071	CA
21.04.1947 pm	Vol. II	pp. 1073-1104	CA
22.04.1947 am	Vol. II	pp. 1105-1116	CA
22.04.1947 pm	Vol. II	pp. 1117-1153	CA
23.04.1947	Vol. II	pp. 1155-1211	CA
24.04.1947	Vol. II	pp. 1213-1243	CA
28.04.1947	Vol. II	pp. 1245-1270	CA
29.04.1947	Vol. II	pp. 1271-1299	CA
30.04.1947	Vol. II	pp. 1301-1332	CA
09.05.1947 pm	Vol. II	pp. 1536-1558	CA
04.07.1947 pm	Vol. III	pp. 2499-2524	CA
08.07.1947	Vol. III	pp. 2529-2550	CA

TITOLO III

Rapporti Economici

Discussioni generali sui Rapporti Economici

03.05.1947 pm	Vol. II	pp. 1363-1396	CA
06.05.1947 pm	Vol. II	pp. 1429-1467	CA

Art. 35. (10, 30)

La Repubblica tutela il lavoro in tutte le sue forme ed applicazioni.

Cura la formazione e l'elevazione professionale dei lavoratori.

Promuove e favorisce gli accordi e le organizzazioni internazionali intesi ad affermare e regolare i diritti del lavoro.

Riconosce la libertà di emigrazione, salvo gli obblighi stabiliti dalla legge nell'interesse generale, e tutela il lavoro italiano all'estero.

Debates:

09.09.1946	Vol. VIII	pp. 2079-2084	S3
10.09.1946	Vol. VIII	pp. 2085-2089	S3
24.09.1946	Vol. VIII	pp. 2135-2138	S3
03.10.1946	Vol. VI	pp. 481-490	S1
04.10.1946	Vol. VI	pp. 491-498	S1
08.10.1946	Vol. VI	pp. 499-509	S1
18.10.1946	Vol. VI	pp. 563-566	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
06.03.1947	Vol. I	pp. 203-230	CA
07.03.1947	Vol. I	pp. 233-257	CA
08.03.1947	Vol. I	pp. 259-285	CA
26.03.1947	Vol. I	pp. 665-692	CA
03.05.1947 pm	Vol. II	pp. 1363-1396	CA
06.05.1947 pm	Vol. II	pp. 1429-1467	CA
07.05.1947 pm	Vol. II	pp. 1472-1496	CA
08.05.1947	Vol. II	pp. 1497-1531	CA
12.05.1947 pm	Vol. II	pp. 1617-1656	CA
23.05.1947	Vol. III	pp. 1915-1947	CA

Art. 36. (32)

Il lavoratore ha diritto ad una retribuzione proporzionata alla quantità e qualità del suo lavoro e in ogni caso sufficiente ad assicurare a se e alla famiglia un'esistenza libera e dignitosa.

La durata massima della giornata lavorativa è stabilita dalla legge.

Il lavoratore ha diritto al riposo settimanale e a ferie annuali retribuite, e non può rinunziarvi.

Debates:

11.09.1946	Vol. VIII	pp. 2091-2098	S3
12.09.1946	Vol. VIII	pp. 2099-2103	S3
13.09.1946	Vol. VIII	pp. 2105-2112	S3
18.09.1946	Vol. VIII	pp. 2113-2119	S3
19.09.1946	Vol. VIII	pp. 2121-2126	S3
03.10.1946	Vol. VI	pp. 481-490	S1
08.10.1946	Vol. VI	pp. 499-509	S1
15.10.1946	Vol. VI	pp. 535-548	S1
16.10.1946	Vol. VI	pp. 549-562	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
08.03.1947	Vol. I	pp. 259-285	CA
11.03.1947	Vol. I	pp. 313-339	CA
27.03.1947	Vol. I	pp. 695-718	CA
15.04.1947 pm	Vol. I	pp. 913-937	CA
03.05.1947 pm	Vol. II	pp. 1363-1396	CA
06.05.1947 pm	Vol. II	pp. 1429-1467	CA
07.05.1947 pm	Vol. II	pp. 1472-1496	CA
08.05. 1947	Vol. II	pp. 1497-1531	CA
10.05.1947 am	Vol. II	pp. 1559-1580	CA
10.05.1947 pm	Vol. II	pp. 1581-1614	CA
12.05.1947 pm	Vol. II	pp. 1617-1656	CA

Art. 37. (33)

La donna lavoratrice ha gli stessi diritti e, a parità di lavoro, le stesse retribuzioni che spettano al lavoratore. Le condizioni di lavoro devono consentire l'adempimento della sua essenziale funzione familiare e assicurare alla madre e al bambino una speciale adeguata protezione.

La legge stabilisce il limite minimo di età per il lavoro salariato.

La Repubblica tutela il lavoro dei minori con speciali norme e garantisce ad essi, a parità di lavoro, il diritto alla parità di retribuzione.

Debates:

26.07.1946	Vol. VIII	pp. 2073-2078	S3
13.09.1946	Vol. VIII	pp. 2105-2112	S3
18.09.1946	Vol. VIII	pp. 2113-2119	S3
19.09.1946	Vol. VIII	pp. 2121-2126	S3
24.09.1946	Vol. VIII	pp. 2135-2138	S3
03.10.1946	Vol. VI	pp. 481-490	S1
08.10.1946	Vol. VI	pp. 499-509	S1
10.10.1946	Vol. VI	pp. 519-522	S1
25.01.1947	Vol. VI	p. 189	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA
18.03.1947 pm	Vol. I	pp. 479-502	CA
22.04.1947 am	Vol. II	pp. 1105-1116	CA

03.05.1947 pm	Vol. II	pp. 1363-1396	CA
06.05.1947 pm	Vol. II	pp. 1429-1467	CA
07.05.1947 pm	Vol. II	pp. 1472-1496	CA
08.05.1947	Vol. II	pp. 1497-1531	CA
10.05.1947 am	Vol. II	pp. 1559-1580	CA
10.05.1947 pm	Vol. II	pp. 1581-1614	CA
12.05.1947 pm	Vol. II	pp. 1617-1656	CA
07.11.1947 pm	Vol. V	pp. 3693-3716	CA

Art. 38. (34)

Ogni cittadino inabile al lavoro e sprovvisto dei mezzi necessari per vivere ha diritto al mantenimento e all'assistenza sociale.

I lavoratori hanno diritto che siano preveduti ed assicurati mezzi adeguati alle loro esigenze di vita in caso di infortunio, malattia, invalidità e vecchiaia, disoccupazione involontaria.

Gli inabili ed i minorati hanno diritto all'educazione e all'avviamento professionale.

Ai compiti previsti in questo articolo provvedono organi ed istituti predisposti o integrati dallo Stato.

L'assistenza privata è libera.

Debates:

26.07.1946	Vol. VIII	pp. 2073-2078	S3
11.09.1946	Vol. VIII	pp. 2091-2098	S3
12.09.1946	Vol. VIII	pp. 2099-2103	S3
03.10.1946	Vol. VI	pp. 481-490	S1
08.10.1946	Vol. VI	pp. 499-509	S1
09.10.1946	Vol. VI	pp. 511-518	S1
10.10.1946	Vol. VI	pp. 519-522	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
08.03.1947	Vol. I	pp. 259-285	CA
11.03.1947	Vol. I	pp. 313-339	CA
21.04.1947 pm	Vol. II	pp. 1073-1104	CA
22.04.1947 pm	Vol. II	pp. 1117-1153	CA
03.05.1947 pm	Vol. II	pp. 1363-1396	CA
06.05.1947 pm	Vol. II	pp. 1429-1467	CA
07.05.1947 pm	Vol. II	pp. 1472-1496	CA
08.05.1947	Vol. II	pp. 1497-1531	CA
10.05.1947 am	Vol. II	pp. 1559-1580	CA
10.05.1947 pm	Vol. II	pp. 1581-1614	CA
12.05.1947 pm	Vol. II	pp. 1617-1656	CA

Art. 39. (35)

L'organizzazione sindacale è libera.

Ai sindacati non può essere imposto altro obbligo se non la loro registrazione presso uffici locali o centrali, secondo le norme di legge.

È condizione per la registrazione che gli statuti dei sindacati sanciscano un ordinamento interno a base democratica.

I sindacati registrati hanno personalità giuridica. Possono, rappresentati unitariamente in proporzione dei loro iscritti, stipulare contratti collettivi di lavoro con efficacia obbligatoria per tutti gli appartenenti alle categorie alle quali il contratto si riferisce.

Debates:

26.07.1946	Vol. VIII	pp. 2073-2078	S3
03.10.1946	Vol. VI	pp. 481-490	S1
04.10.1946 am	Vol. VIII	pp. 2229-2237	S3
04.10.1946 pm	Vol. VIII	pp. 2239-2243	S3
11.10.1946	Vol. VI	pp. 523-534	S1
15.10.1946	Vol. VI	pp. 535-548	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA
08.03.1947	Vol. I	pp. 259-285	CA
13.03.1947	Vol. I	pp. 359-391	CA
03.05.1947 pm	Vol. II	pp. 1363-1396	CA
06.05.1947 pm	Vol. II	pp. 1429-1467	CA
07.05.1947 pm	Vol. II	pp. 1472-1496	CA
08.05.1947	Vol. II	pp. 1497-1531	CA
10.05.1947 pm	Vol. II	pp. 1581-1614	CA
13.05.1947 am	Vol. II	pp. 1657-1682	CA

Art. 40. (36)

Il diritto di sciopero si esercita nell'ambito delle leggi che lo regolano.

Debates:

26.07.1946	Vol. VIII	pp. 2073-2078	S3
03.10.1946	Vol. VI	pp. 481-490	S1
10.10.1946	Vol. VI	pp. 519-522	S1
11.10.1946	Vol. VI	pp. 523-534	S1
15.10.1946	Vol. VI	pp. 535-548	S1
14.01.1947	Vol. VI	pp. 87-100	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
07.03.1947	Vol. I	pp. 233-257	CA
08.03.1947	Vol. I	pp. 259-285	CA
14.03.1947 pm	Vol. I	pp. 395-423	CA
03.05.1947 pm	Vol. II	pp. 1363-1396	CA
06.05.1947 pm	Vol. II	pp. 1429-1467	CA
07.05.1947 pm	Vol. II	pp. 1472-1496	CA
08.05.1947	Vol. II	pp. 1497-1531	CA
12.05.1947 pm	Vol. II	pp. 1617-1656	CA
06.11.1947 pm	Vol. V	pp. 3659-3680	CA

Art. 41. (37, 39)

L'iniziativa economica privata è libera.

Non può svolgersi in contrasto con l'utilità sociale o in modo da recare danno alla sicurezza, alla libertà, alla dignità umana.

La legge determina i programmi e i controlli opportuni perché l'attività economica pubblica e privata possa essere indirizzata e coordinata a fini sociali.

Debates:

26.07.1946	Vol. VIII	pp. 2073-2078	S3
01.10.1946 am	Vol. VIII	pp. 2179-2187	S3
01.10.1946 pm	Vol. VIII	pp. 2189-2197	S3
02.10.1946 am	Vol. VIII	pp. 2199-2206	S3
02.10.1946 pm	Vol. VIII	pp. 2207-2212	S3
03.10.1946	Vol. VI	pp. 481-490	S1
04.10.1946 am	Vol. VIII	pp. 2229-2237	S3
04.10.1946 pm	Vol. VIII	pp. 2239-2243	S3
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
12.03.1947	Vol. I	pp. 341-358	CA
14.03.1947 pm	Vol. I	pp. 395-423	CA
03.05.1947 pm	Vol. II	pp. 1363-1396	CA
06.05.1947 pm	Vol. II	pp. 1429-1467	CA
07.05.1947 pm	Vol. II	pp. 1472-1496	CA
08.05.1947	Vol. II	pp. 1497-1531	CA
09.05.1947 pm	Vol. II	pp. 1536-1558	CA
13.05.1947 am	Vol. II	pp. 1657-1682	CA
14.04.1947	Vol. II	pp. 1715-1747	CA
17.09.1947 pm	Vol. IV	pp. 2881-2907	CA

Art. 42. (38)

La proprietà è pubblica o privata. I beni economici appartengono allo Stato, ad enti o a privati.

La proprietà privata è riconosciuta e garantita dalla legge, che ne determina i modi di acquisto, di godimento e i limiti allo scopo di assicurarne la funzione sociale e di renderla accessibile a tutti.

La proprietà privata può essere, nei casi previsti dalla legge, e salvo indennizzo, espropriata per motivi d'interesse generale. La legge stabilisce le norme ed i limiti della successione legittima e testamentaria e i diritti dello Stato sulle eredità.

Debates:

26.07.1946	Vol. VIII	pp. 2073-2078	S3
25.09.1946	Vol. VIII	pp. 2139-2149	S3
26.09.1946	Vol. VIII	pp. 2151-2158	S3
27.09.1946 am	Vol. VIII	pp. 2159-2167	S3
27.09.1946 pm	Vol. VIII	pp. 2169-2174	S3
30.09.1946	Vol. VIII	pp. 2175-2177	S3
01.10.1946 am	Vol. VIII	pp. 2179-2187	S3
01.10.1946 pm	Vol. VIII	pp. 2189-2197	S3
02.10.1946 am	Vol. VIII	pp. 2199-2206	S3

02.10.1946 pm	Vol. VIII	pp. 2207-2212	S3
03.10.1946 am	Vol. VIII	pp. 2213-2222	S3
03.10.1946	Vol. VI	pp. 481-490	S1
03.10.1946 pm	Vol. VIII	pp. 2223-2227	S3
16.10.1946	Vol. VI	pp. 549-562	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA
03.05.1947 pm	Vol. II	pp. 1363-1396	CA
06.05.1947 pm	Vol. II	pp. 1429-1467	CA
07.05.1947 pm	Vol. II	pp. 1472-1496	CA
13.05.1947 am	Vol. II	pp. 1657-1682	CA
13.05.1947 pm	Vol. II	pp. 1685-1714	CA
14.04.1947	Vol. II	pp. 1715-1747	CA
05.12.1947 pm	Vol. V	pp. 4417-4452	CA

Art. 43. (40)

A fini di utilità generale la legge può riservare originariamente o trasferire, mediante espropriazione e salvo indennizzo, allo Stato, ad enti pubblici o a comunità di lavoratori o di utenti determinate imprese o categorie di imprese, che si riferiscano a servizi pubblici essenziali o a fonti di energia o a situazioni di monopolio ed abbiano carattere di preminente interesse generale.

Debates:

25.09.1946	Vol. VIII	pp. 2139-2149	S3
26.09.1946	Vol. VIII	pp. 2151-2158	S3
27.09.1946 am	Vol. VIII	pp. 2159-2167	S3
27.09.1946 pm	Vol. VIII	pp. 2169-2174	S3
30.09.1946	Vol. VIII	pp. 2175-2177	S3
01.10.1946 am	Vol. VIII	pp. 2179-2187	S3
01.10.1946 pm	Vol. VIII	pp. 2189-2197	S3
02.10.1946 am	Vol. VIII	pp. 2199-2206	S3
02.10.1946 pm	Vol. VIII	pp. 2207-2212	S3
03.10.1946 am	Vol. VIII	pp. 2213-2222	S3
03.10.1946	Vol. VI	pp. 481-490	S1
03.10.1946 pm	Vol. VIII	pp. 2223-2227	S3
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
14.03.1947 pm	Vol. I	pp. 395-423	CA
03.05.1947 pm	Vol. II	pp. 1363-1396	CA
06.05.1947 pm	Vol. II	pp. 1429-1467	CA
07.05.1947 pm	Vol. II	pp. 1472-1496	CA
08.05.1947	Vol. II	pp. 1497-1531	CA
13.05.1947 am	Vol. II	pp. 1657-1682	CA
13.05.1947 pm	Vol. II	pp. 1685-1714	CA

Art. 44. (41)

Al fine di conseguire il razionale sfruttamento del suolo e di stabilire equi rapporti sociali, la legge impone obblighi e vincoli alla proprietà terriera privata, fissa limiti alla sua estensione secondo le regioni e le zone agrarie, promuove ed impone la bonifica delle terre, la trasformazione del latifondo e la ricostituzione delle unità produttive; aiuta la piccola e la media proprietà.

La legge dispone provvedimenti a favore delle zone montane.

Debates:

25.09.1946	Vol. VIII	pp. 2139-2149	S3
26.09.1946	Vol. VIII	pp. 2151-2158	S3
27.09.1946 am	Vol. VIII	pp. 2159-2167	S3
27.09.1946 pm	Vol. VIII	pp. 2169-2174	S3
30.09.1946	Vol. VIII	pp. 2175-2177	S3
01.10.1946 am	Vol. VIII	pp. 2179-2187	S3
01.10.1946 pm	Vol. VIII	pp. 2189-2197	S3
02.10.1946 am	Vol. VIII	pp. 2199-2206	S3
02.10.1946 pm	Vol. VIII	pp. 2207-2212	S3
03.10.1946 am	Vol. VIII	pp. 2213-2222	S3
03.10.1946	Vol. VI	pp. 481-490	S1
03.10.1946 pm	Vol. VIII	pp. 2223-2227	S3
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA
14.03.1947 pm	Vol. I	pp. 395-423	CA
17.04.1947 pm	Vol. II	pp. 963-893	CA
03.05.1947 pm	Vol. II	pp. 1363-1396	CA
06.05.1947 pm	Vol. II	pp. 1429-1467	CA
07.05.1947 pm	Vol. II	pp. 1472-1496	CA
13.05.1947 am	Vol. II	pp. 1657-1682	CA
13.05.1947 pm	Vol. II	pp. 1685-1714	CA

Art. 45. (42)

La Repubblica riconosce la funzione sociale della cooperazione a carattere di mutualità e senza fini di speculazione privata. La legge ne promuove e favorisce l'incremento con i mezzi più idonei e ne assicura, con gli opportuni controlli, il carattere e le finalità.

La legge provvede alla tutela e allo sviluppo dell'artigianato.

Debates:

01.10.1946 am	Vol. VIII	pp. 2179-2187	S3
01.10.1946 pm	Vol. VIII	pp. 2189-2197	S3
02.10.1946 am	Vol. VIII	pp. 2199-2206	S3
02.10.1946 pm	Vol. VIII	pp. 2207-2212	S3
03.10.1946 am	Vol. VIII	pp. 2213-2222	S3
03.10.1946	Vol. VI	pp. 481-490	S1
03.10.1946 pm	Vol. VIII	pp. 2223-2227	S3
04.10.1946 am	Vol. VIII	pp. 2229-2237	S3
04.10.1946 pm	Vol. VIII	pp. 2239-2243	S3

25.01.1947	Vol. VI	pp. 189-190	AP
28.01.1947	Vol. VI	p. 206	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA
11.03.1947	Vol. I	pp. 313-339	CA
03.05.1947 pm	Vol. II	pp. 1363-1396	CA
06.05.1947 pm	Vol. II	pp. 1429-1467	CA
07.05.1947 pm	Vol. II	pp. 1472-1496	CA
14.04.1947	Vol. II	pp. 1715-1747	CA

Art. 46. (43)

Ai fini della elevazione economica e sociale del lavoro e in armonia con le esigenze della produzione la Repubblica riconosce il diritto dei lavoratori a collaborare, nei modi e nei limiti stabiliti dalle leggi, alla gestione delle aziende.

Debates:

01.10.1946 am	Vol. VIII	pp. 2179-2187	S3
01.10.1946 pm	Vol. VIII	pp. 2189-2197	S3
02.10.1946 am	Vol. VIII	pp. 2199-2206	S3
02.10.1946 pm	Vol. VIII	pp. 2207-2212	S3
03.10.1946	Vol. VI	pp. 481-490	S1
16.10.1946	Vol. VI	pp. 549-562	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
08.03.1947	Vol. I	pp. 259-285	CA
11.03.1947	Vol. I	pp. 313-339	CA
14.03.1947 pm	Vol. I	pp. 395-423	CA
03.05.1947 pm	Vol. II	pp. 1363-1396	CA
06.05.1947 pm	Vol. II	pp. 1429-1467	CA
08.05.1947	Vol. II	pp. 1497-1531	CA
10.05.1947 am	Vol. II	pp. 1559-1580	CA
13.05.1947 am	Vol. II	pp. 1657-1682	CA
14.04.1947	Vol. II	pp. 1715-1747	CA

Art. 47. (44)

La Repubblica incoraggia e tutela il risparmio in tutte le sue forme; disciplina, coordina e controlla l'esercizio del credito.

Favorisce l'accesso del risparmio popolare alla proprietà dell'abitazione, alla proprietà diretta coltivatrice e al diretto e indiretto investimento azionario nei grandi complessi produttivi del paese.

Debates:

03.10.1946	Vol. VI	pp. 481-490	S1
10.10.1946	Vol. VI	pp. 519-522	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA

03.05.1947 pm	Vol. II	pp. 1363-1396	CA
07.05.1947 pm	Vol. II	pp. 1472-1496	CA
08.05.1947	Vol. II	pp. 1497-1531	CA
10.05.1947 pm	Vol. II	pp. 1581-1614	CA
19.05.1947	Vol. II	pp. 1749-1790	CA

TITOLO IV

Rapporti Politici

Discussioni generali sui Rapporti Politici

19.05.1947	Vol. II	pp. 1749-1790	CA
20.05.1947	Vol. III	pp. 1791-1827	CA
21.05.1947	Vol. III	pp. 1829-1871	CA

Art. 48. (45)

Sono elettori tutti i cittadini, uomini e donne, che hanno raggiunto la maggiore età.
Il voto è personale ed eguale, libero e segreto. Il suo esercizio è dovere civico.
Il diritto di voto non può essere limitato se non per incapacità civile o per effetto di sentenza penale irrevocabile o nei casi di indegnità morale indicati dalla legge.

Debates:

12.09.1946	Vol. VII	pp. 985-993	S2
13.09.1946	Vol. VII	pp. 995-1005	S2
14.11.1946	Vol. VI	pp. 677-684	S1
15.11.1946	Vol. VI	pp. 685-698	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
05.03.1947	Vol. I	pp. 167-200	CA
06.03.1947	Vol. I	pp. 203-230	CA
08.03.1947	Vol. I	pp. 259-285	CA
03.05.1947 pm	Vol. II	pp. 1363-1396	CA
06.05.1947 pm	Vol. II	pp. 1429-1467	CA
07.05.1947 pm	Vol. II	pp. 1472-1496	CA
08.05.1947	Vol. II	pp. 1497-1531	CA
19.05.1947	Vol. II	pp. 1749-1790	CA
20.05.1947	Vol. III	pp. 1791-1827	CA
21.05.1947	Vol. III	pp. 1829-1871	CA
22.05.1947	Vol. III	pp. 1873-1914	CA
09.10.1947 pm	Vol. IV	pp. 3157-3186	CA
29.10.1947 am	Vol. IV	pp. 3581-3590	CA
29.10.1947 pm	Vol. IV	pp. 3591-3634	CA

Art. 49. (47)

Tutti i cittadini hanno diritto di associarsi liberamente in partiti per concorrere con metodo democratico a determinare la politica nazionale.

Debates:

15.11.1946	Vol. VI	pp. 685-698	S1
19.11.1946	Vol. VI	pp. 699-707	S1
20.11.1946	Vol. VI	pp. 709-715	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
11.03.1947	Vol. I	pp. 313-339	CA
12.03.1947	Vol. I	pp. 341-358	CA
03.05.1947 pm	Vol. II	pp. 1363-1396	CA
19.05.1947	Vol. II	pp. 1749-1790	CA
20.05.1947	Vol. III	pp. 1791-1827	CA
21.05.1947	Vol. III	pp. 1829-1871	CA
22.05.1947	Vol. III	pp. 1873-1914	CA
23.05.1947	Vol. III	pp. 1915-1947	CA
29.10.1947 am	Vol. IV	pp. 3581-3590	CA
29.10.1947 pm	Vol. IV	pp. 3591-3634	CA

Art. 50. (46)

Tutti i cittadini possono rivolgere petizioni alle Camere per chiedere provvedimenti legislativi o esporre comuni necessità.

Debates:

04.09.1946	Vol. VII	pp. 911-923	S2
24.10.1946	Vol. VII	pp. 1235-1241	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
29.03.1947	Vol. I	pp. 743-751	CA
19.05.1947	Vol. II	pp. 1749-1790	CA
21.05.1947	Vol. III	pp. 1829-1871	CA
22.05.1947	Vol. III	pp. 1873-1914	CA

Art. 51. (48)

Tutti i cittadini dell'uno o dell'altro sesso possono accedere agli uffici pubblici e alle cariche elettive in condizioni di eguaglianza, secondo i requisiti stabiliti dalla legge. La legge può, per l'ammissione ai pubblici uffici e alle cariche elettive, parificare ai cittadini gli italiani non appartenenti alla Repubblica.

Chi è chiamato a funzioni pubbliche elettive ha diritto di disporre del tempo necessario al loro adempimento e di conservare il suo posto di lavoro.

Debates:

20.09.1946	Vol. VIII	pp. 2127-2133	S3
15.11.1946	Vol. VI	pp. 685-698	S1
25.01.1947	Vol. VI	pp. 190-191	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA

05.03.1947	Vol. I	pp. 167-200	CA
25.03.1947	Vol. I	pp. 613-664	CA
19.05.1947	Vol. II	pp. 1749-1790	CA
21.05.1947	Vol. III	pp. 1829-1871	CA
22.05.1947	Vol. III	pp. 1873-1914	CA
23.05.1947	Vol. III	pp. 1915-1947	CA
14.10.1947 am	Vol. IV	pp. 3225-3238	CA
17.10.1947	Vol. IV	pp. 3335-3366	CA
07.11.1947 pm	Vol. V	pp. 3693-3716	CA
12.11.1947 pm	Vol. V	pp. 3805-3832	CA
20.11.1947 pm	Vol. V	pp. 3925-3963	CA
26.11.1947 am	Vol. V	pp. 4093-4113	CA
26.11.1947 pm	Vol. V	pp. 4115-4139	CA

Art. 52. (49)

La difesa della Patria è sacro dovere del cittadino.

Il servizio militare è obbligatorio nei limiti e modi stabiliti dalla legge. Il suo adempimento non pregiudica la posizione di lavoro del cittadino, nell'esercizio dei diritti politici.

L'ordinamento delle Forze armate si informa allo spirito democratico della Repubblica.

Debates:

15.11.1946	Vol. VI	pp. 685-698	S1
19.11.1946	Vol. VI	pp. 699-707	S1
25.01.1947	Vol. VI	pp. 191-192	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
08.03.1947	Vol. I	pp. 259-285	CA
19.05.1947	Vol. II	pp. 1749-1790	CA
20.05.1947	Vol. III	pp. 1791-1827	CA
21.05.1947	Vol. III	pp. 1829-1871	CA
22.05.1947	Vol. III	pp. 1873-1914	CA
17.10.1947	Vol. IV	pp. 3335-3366	CA
21.10.1947 am	Vol. IV	pp. 3387-3401	CA
03.12.1947 pm	Vol. V	pp. 4319-4346	CA

Art. 53.

Tutti sono tenuti a concorrere alle spese pubbliche in ragione della loro capacità contributiva.

Il sistema tributario è informato a criteri di progressività.

Debates:

06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
23.05.1947	Vol. III	pp. 1915-1947	CA

Art. 54. (50, 51)

Tutti i cittadini hanno il dovere di essere fedeli alla Repubblica e di osservarne la Costituzione e le leggi. I cittadini cui sono affidate funzioni pubbliche hanno il dovere di adempierle con disciplina ed onore prestando giuramento nei casi stabiliti dalla legge.

Debates:

15.11.1946	Vol. VI	pp. 685-698	S1
19.11.1946	Vol. VI	pp. 699-707	S1
19.12.1946	Vol. VI	pp. 795-806	S1
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
07.03.1947	Vol. I	pp. 233-257	CA
10.03.1947	Vol. I	pp. 287-309	CA
21.04.1947 pm	Vol. II	pp. 1073-1104	CA
19.05.1947	Vol. II	pp. 1749-1790	CA
20.05.1947	Vol. III	pp. 1791-1827	CA
21.05.1947	Vol. III	pp. 1829-1871	CA
22.05.1947	Vol. III	pp. 1873-1914	CA
23.05.1947	Vol. III	pp. 1915-1947	CA
14.10.1947 am	Vol. IV	pp. 3225-3238	CA
12.11.1947 am	Vol. V	pp. 3789-3803	CA

PARTE II

Ordinamento della Repubblica

Discussioni Generali

10.09.1947	Vol. IV	pp. 2767-2778	CA
11.09.1947 pm	Vol. IV	pp. 2781-2804	CA
12.09.1947	Vol. IV	pp. 2805-2837	CA
15.09.1947	Vol. IV	pp. 2841-2850	CA
16.09.1947 pm	Vol. IV	pp. 2853-2877	CA
17.09.1947 pm	Vol. IV	pp. 2881-2907	CA
18.09.1947 pm	Vol. IV	pp. 2911-2931	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA

TITOLO I

Il Parlamento**Sezione I - Le Camere****Art. 55. (52)**

Il Parlamento si compone della Camera dei deputati e del Senato della Repubblica.

Il Parlamento si riunisce in seduta comune dei membri delle due Camere nei soli casi stabiliti dalla Costituzione.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
06.09.1946	Vol. VII	pp. 945-958	S2
07.09.1946	Vol. VII	pp. 959-971	S2
24.09.1946	Vol. VII	pp. 1081-1091	S2
23.10.1946	Vol. VII	pp. 1229-1233	S2
21.12.1946	Vol. VII	pp. 1621-1630	S2
22.01.1947	Vol. VI	pp. 137-138	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
05.03.1947	Vol. I	pp. 167-200	CA
06.03.1947	Vol. I	pp. 203-230	CA
07.03.1947	Vol. I	pp. 233-257	CA
08.03.1947	Vol. I	pp. 259-285	CA
10.03.1947	Vol. I	pp. 287-309	CA
11.03.1947	Vol. I	pp. 313-339	CA
12.03.1947	Vol. I	pp. 341-358	CA
23.05.1947	Vol. III	pp. 1915-1947	CA
10.09.1947	Vol. IV	pp. 2767-2778	CA
12.09.1947	Vol. IV	pp. 2805-2837	CA
16.09.1947 pm	Vol. IV	pp. 2853-2877	CA
17.09.1947 pm	Vol. IV	pp. 2881-2907	CA
18.09.1947 pm	Vol. IV	pp. 2911-2931	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
23.09.1947	Vol. IV	pp. 2975-2993	CA
10.10.1947 am	Vol. IV	pp. 3187-3203	CA
18.10.1947	Vol. IV	pp. 3367-3383	CA
21.10.1947 am	Vol. IV	pp. 3387-3401	CA
24.10.1947 pm	Vol. IV	pp. 3525-3565	CA

Art. 56. (53, 54)

La Camera dei deputati è eletta a suffragio universale e diretto, in ragione di un deputato per ottantamila abitanti o per frazione superiore a quarantamila.

Sono eleggibili a deputati tutti gli elettori che nel giorno delle elezioni hanno compiuto i venticinque anni di età.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
06.09.1946	Vol. VII	pp. 945-958	S2
07.09.1946	Vol. VII	pp. 959-971	S2
10.09.1946	Vol. VII	pp. 973-983	S2
12.09.1946	Vol. VII	pp. 985-993	S2
13.09.1946	Vol. VII	pp. 995-1005	S2
18.09.1946	Vol. VII	pp. 1019-1033	S2
07.11.1946	Vol. VII	pp. 1273-1276	S2
08.11.1946	Vol. VII	pp. 1277-1284	S2

27.01.1947	Vol. VI	pp. 193-196	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
08.03.1947	Vol. I	pp. 259-285	CA
12.03.1947	Vol. I	pp. 341-358	CA
12.09.1947	Vol. IV	pp. 2805-2837	CA
17.09.1947 pm	Vol. IV	pp. 2881-2907	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
23.09.1947	Vol. IV	pp. 2975-2993	CA
05.12.1947 pm	Vol. V	pp. 4417-4452	CA

Art. 57. (55)

Il Senato della Repubblica è eletto a base regionale. A ciascuna Regione è attribuito un senatore per duecentomila abitanti o per frazione superiore a centomila.

Nessuna Regione può avere un numero di senatori inferiore a sei. La Valle d'Aosta ha un solo senatore.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
06.09.1946	Vol. VII	pp. 945-958	S2
07.09.1946	Vol. VII	pp. 959-971	S2
18.09.1946	Vol. VII	pp. 1019-1033	S2
24.09.1946	Vol. VII	pp. 1081-1091	S2
25.09.1946	Vol. VII	pp. 1093-1107	S2
26.09.1946	Vol. VII	pp. 1109-1115	S2
27.09.1946	Vol. VII	pp. 1117-1126	S2
28.09.1946	Vol. VII	pp. 1127-1131	S2
01.10.1946	Vol. VII	pp. 1133-1140	S2
02.10.1946	Vol. VII	pp. 1141-1149	S2
03.10.1946	Vol. VII	pp. 1151-1160	S2
10.10.1946	Vol. VII	pp. 1161-1165	S2
15.10.1946	Vol. VII	pp. 1167-1178	S2
16.10.1946	Vol. VII	pp. 1179-1186	S2
22.10.1946	Vol. VII	pp. 1219-1228	S2
05.11.1946	Vol. VII	pp. 1262-1263	S2
14.01.1947	Vol. VIII	pp. 1859-1869	S2i
23.01.1947	Vol. VII	pp. 1685-1695	S2
24.01.1947	Vol. VII	pp. 1697-1705	S2
27.01.1947	Vol. VI	pp. 196-198	AP
29.01.1947	Vol. VI	pp. 215-226	AP
29.01.1947	Vol. VI	pp. 227-230	AP
31.01.1947	Vol. VI	pp. 247-251	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
05.03.1947	Vol. I	pp. 167-200	CA
06.03.1947	Vol. I	pp. 203-230	CA
07.03.1947	Vol. I	pp. 233-257	CA
08.03.1947	Vol. I	pp. 259-285	CA
12.03.1947	Vol. I	pp. 341-358	CA
23.05.1947	Vol. III	pp. 1915-1947	CA

10.09.1947	Vol. IV	pp. 2767-2778	CA
11.09.1947 pm	Vol. IV	pp. 2781-2804	CA
12.09.1947	Vol. IV	pp. 2805-2837	CA
15.09.1947	Vol. IV	pp. 2841-2850	CA
16.09.1947 pm	Vol. IV	pp. 2853-2877	CA
17.09.1947 pm	Vol. IV	pp. 2881-2907	CA
18.09.1947 pm	Vol. IV	pp. 2911-2931	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
24.09.1947 pm	Vol. IV	pp. 2997-3026	CA
25.09.1947 pm	Vol. IV	pp. 3029-3053	CA
07.10.1947	Vol. IV	pp. 3083-3103	CA
08.10.1947 am	Vol. IV	pp. 3105-3114	CA
08.10.1947 pm	Vol. IV	pp. 3115-3143	CA
06.12.1947	Vol. V	pp. 4453-4472	CA
13.12.1947 pm	Vol. V	pp. 4511-4522	CA
16.12.1947 pm	Vol. V	pp. 4527-4529	CA

Art. 58. (55, 56)

I senatori sono eletti a suffragio universale e diretto dagli elettori che hanno superato il venticinquesimo anno di età.

Sono eleggibili a senatori gli elettori che hanno compiuto il quarantesimo anno.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
06.09.1946	Vol. VII	pp. 945-958	S2
07.09.1946	Vol. VII	pp. 959-971	S2
25.09.1946	Vol. VII	pp. 1093-1107	S2
27.09.1946	Vol. VII	pp. 1117-1126	S2
28.09.1946	Vol. VII	pp. 1127-1131	S2
01.10.1946	Vol. VII	pp. 1133-1140	S2
02.10.1946	Vol. VII	pp. 1141-1149	S2
03.10.1946	Vol. VII	pp. 1151-1160	S2
10.10.1946	Vol. VII	pp. 1161-1165	S2
15.10.1946	Vol. VII	pp. 1167-1178	S2
16.10.1946	Vol. VII	pp. 1179-1186	S2
17.10.1946	Vol. VII	pp. 1187-1195	S2
14.01.1947	Vol. VIII	pp. 1859-1869	S2i
22.01.1947	Vol. VII	pp. 1677-1683	S2
23.01.1947	Vol. VII	pp. 1685-1695	S2
24.01.1947	Vol. VII	pp. 1697-1705	S2
27.01.1947	Vol. VI	pp. 196-198	AP
29.01.1947	Vol. VI	pp. 215-226	AP
29.01.1947	Vol. VI	pp. 227-230	AP
31.01.1947	Vol. VI	pp. 247-251	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
08.03.1947	Vol. I	pp. 259-285	CA
12.03.1947	Vol. I	pp. 341-358	CA
11.09.1947 pm	Vol. IV	pp. 2781-2804	CA

12.09.1947	Vol. IV	pp. 2805-2837	CA
16.09.1947 pm	Vol. IV	pp. 2853-2877	CA
17.09.1947 pm	Vol. IV	pp. 2881-2907	CA
18.09.1947 pm	Vol. IV	pp. 2911-2931	CA
23.09.1947	Vol. IV	pp. 2975-2993	CA
24.09.1947 pm	Vol. IV	pp. 2997-3026	CA
25.09.1947 pm	Vol. IV	pp. 3029-3053	CA
07.10.1947	Vol. IV	pp. 3083-3103	CA
08.10.1947 am	Vol. IV	pp. 3105-3114	CA
08.10.1947 pm	Vol. IV	pp. 3115-3143	CA
09.10.1947 pm	Vol. IV	pp. 3157-3186	CA

Art. 59. (56)

È senatore di diritto e a vita, salvo rinunzia, chi è stato Presidente della Repubblica.

Il Presidente della Repubblica può nominare senatori a vita cinque cittadini che hanno illustrato la Patria per altissimi meriti nel campo sociale, scientifico, artistico e letterario.

Debates:

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04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
06.09.1946	Vol. VII	pp. 945-958	S2
07.09.1946	Vol. VII	pp. 959-971	S2
25.09.1946	Vol. VII	pp. 1093-1107	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
08.03.1947	Vol. I	pp. 259-285	CA
11.03.1947	Vol. I	pp. 313-339	CA
16.09.1947 pm	Vol. IV	pp. 2853-2877	CA
17.09.1947 pm	Vol. IV	pp. 2881-2907	CA
18.09.1947 pm	Vol. IV	pp. 2911-2931	CA
24.09.1947 pm	Vol. IV	pp. 2997-3026	CA
08.10.1947 pm	Vol. IV	pp. 3115-3143	CA
09.10.1947 am	Vol. IV	pp. 3145-3155	CA

Art. 60. (58)

La Camera dei deputati è eletta per cinque anni, il Senato della Repubblica per sei.

La durata di ciascuna Camera non può essere prorogata se non per legge e soltanto in caso di guerra.

Debates:

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04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
06.09.1946	Vol. VII	pp. 945-958	S2
07.09.1946	Vol. VII	pp. 959-971	S2
13.09.1946	Vol. VII	pp. 995-1005	S2
20.09.1946	Vol. VII	pp. 1051-1067	S2

25.09.1946	Vol. VII	pp. 1093-1107	S2
27.09.1946	Vol. VII	pp. 1117-1126	S2
15.10.1946	Vol. VII	pp. 1167-1178	S2
22.10.1946	Vol. VII	pp. 1219-1228	S2
23.10.1946	Vol. VII	pp. 1229-1233	S2
06.11.1946	Vol. VII	pp. 1265-1272	S2
27.01.1947	Vol. VI	pp. 196-198	AP
27.01.1947	Vol. VI	pp. 198-201	AP
29.01.1947	Vol. VI	pp. 215-226	AP
29.01.1947	Vol. VI	pp. 227-230	AP
31.01.1947	Vol. VI	pp. 247-251	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
15.09.1947	Vol. IV	pp. 2841-2850	CA
09.10.1947 pm	Vol. IV	pp. 3157-3186	CA

Art. 61. (58)

Le elezioni delle nuove Camere hanno luogo entro settanta giorni dalla fine delle precedenti. La prima riunione ha luogo non oltre il ventesimo giorno dalle elezioni. Finché non siano riunite le nuove Camere sono prorogati i poteri delle precedenti.

Debates:

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04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
06.09.1946	Vol. VII	pp. 945-958	S2
07.09.1946	Vol. VII	pp. 959-971	S2
20.09.1946	Vol. VII	pp. 1051-1067	S2
06.11.1946	Vol. VII	pp. 1265-1272	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
10.03.1947	Vol. I	pp. 287-309	CA
15.09.1947	Vol. IV	pp. 2841-2850	CA
09.10.1947 pm	Vol. IV	pp. 3157-3186	CA
22.10.1947 pm	Vol. IV	pp. 3437-3468	CA
12.12.1947 am	Vol. V	pp. 4485-4496	CA
12.12.1947 pm	Vol. V	pp. 4497-4508	CA
20.12.1947 am	Vol. V	pp. 4543-4558	CA

Art. 62. (59)

Le Camere si riuniscono di diritto il primo giorno non festivo di febbraio e di ottobre. Ciascuna Camera può essere convocata in via straordinaria per iniziativa del suo Presidente o del Presidente della Repubblica o di un terzo dei suoi componenti. Quando si riunisce in via straordinaria una Camera, è convocata di diritto anche l'altra.

Debates:

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04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
06.09.1946	Vol. VII	pp. 945-958	S2
07.09.1946	Vol. VII	pp. 959-971	S2
20.09.1946	Vol. VII	pp. 1051-1067	S2
23.10.1946	Vol. VII	pp. 1229-1233	S2
06.11.1946	Vol. VII	pp. 1265-1272	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
09.10.1947 pm	Vol. IV	pp. 3157-3186	CA
10.10.1947 am	Vol. IV	pp. 3187-3203	CA
12.12.1947 am	Vol. V	pp. 4485-4496	CA

Art. 63. (60)

Ciascuna Camera elegge fra i suoi componenti il Presidente e l'Ufficio di presidenza. Quando il Parlamento si riunisce in seduta comune, il Presidente e l'Ufficio di presidenza sono quelli della Camera dei deputati.

Debates:

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04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
06.09.1946	Vol. VII	pp. 945-958	S2
07.09.1946	Vol. VII	pp. 959-971	S2
20.09.1946	Vol. VII	pp. 1051-1067	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
16.09.1947 pm	Vol. IV	pp. 2853-2877	CA
10.10.1947 am	Vol. IV	pp. 3187-3203	CA
18.10.1947	Vol. IV	pp. 3367-3383	CA
24.10.1947 pm	Vol. IV	pp. 3525-3565	CA

Art. 64. (61)

Ciascuna Camera adotta il proprio regolamento a maggioranza assoluta dei suoi componenti.

Le sedute sono pubbliche; tuttavia ciascuna delle due Camere e il Parlamento a Camere riunite possono deliberare di adunarsi in seduta segreta.

Le deliberazioni di ciascuna Camera e del Parlamento non sono valide se non è presente la maggioranza dei loro componenti, e se non sono adottate a maggioranza dei presenti, salvo che la Costituzione prescriva una maggioranza speciale.

I membri del Governo, anche se non fanno parte delle Camere, hanno diritto, e se richiesti obbligo, di assistere alle sedute. Devono essere sentiti ogni volta che lo richiedono.

Debates:

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04.09.1946	Vol. VII	pp. 911-923	S2

05.09.1946	Vol. VII	pp. 925-944	S2
06.09.1946	Vol. VII	pp. 945-958	S2
07.09.1946	Vol. VII	pp. 959-971	S2
20.09.1946	Vol. VII	pp. 1051-1067	S2
24.10.1946	Vol. VII	pp. 1235-1241	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
16.09.1947 pm	Vol. IV	pp. 2853-2877	CA
17.09.1947 pm	Vol. IV	pp. 2881-2907	CA
10.10.1947 am	Vol. IV	pp. 3187-3203	CA
24.10.1947 am	Vol. IV	pp. 3511-3524	CA
24.10.1947 pm	Vol. IV	pp. 3525-3565	CA

Art. 65. (62)

La legge determina i casi di ineleggibilità e di incompatibilità con l'ufficio di deputato o di senatore.

Nessuno può appartenere contemporaneamente alle due Camere.

Debates:

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05.09.1946	Vol. VII	pp. 925-944	S2
06.09.1946	Vol. VII	pp. 945-958	S2
07.09.1946	Vol. VII	pp. 959-971	S2
13.09.1946	Vol. VII	pp. 995-1005	S2
18.09.1946	Vol. VII	pp. 1019-1033	S2
25.09.1946	Vol. VII	pp. 1093-1107	S2
02.10.1946	Vol. VII	pp. 1141-1149	S2
10.10.1946	Vol. VII	pp. 1161-1165	S2
15.10.1946	Vol. VII	pp. 1167-1178	S2
16.10.1946	Vol. VII	pp. 1179-1186	S2
17.10.1946	Vol. VII	pp. 1187-1195	S2
18.10.1946	Vol. VII	pp. 1197-1210	S2
19.10.1946	Vol. VII	pp. 1211-1218	S2
24.10.1946	Vol. VII	pp. 1235-1241	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
10.10.1947 am	Vol. IV	pp. 3187-3203	CA

Art. 66. (57, 63)

Ciascuna Camera giudica dei titoli di ammissione dei suoi componenti e delle cause sopraggiunte di ineleggibilità e di incompatibilità.

Debates:

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05.09.1946	Vol. VII	pp. 925-944	S2
06.09.1946	Vol. VII	pp. 945-958	S2
07.09.1946	Vol. VII	pp. 959-971	S2
19.09.1946	Vol. VII	pp. 1035-1049	S2

25.09.1946	Vol. VII	pp. 1093-1107	S2
15.10.1946	Vol. VII	pp. 1167-1178	S2
16.10.1946	Vol. VII	pp. 1179-1186	S2
17.10.1946	Vol. VII	pp. 1187-1195	S2
19.10.1946	Vol. VII	pp. 1211-1218	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
09.10.1947 pm	Vol. IV	pp. 3157-3186	CA
10.10.1947 am	Vol. IV	pp. 3187-3203	CA
10.10.1947 pm	Vol. IV	pp. 3205-3221	CA

Art. 67. (64)

Ogni membro del Parlamento rappresenta la Nazione ed esercita le sue funzioni senza vincolo di mandato.

Debates:

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04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
06.09.1946	Vol. VII	pp. 945-958	S2
07.09.1946	Vol. VII	pp. 959-971	S2
19.09.1946	Vol. VII	pp. 1035-1049	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
10.10.1947 pm	Vol. IV	pp. 3205-3221	CA

Art. 68. (65)

I membri del Parlamento non possono essere perseguiti per le opinioni espresse e i voti dati nell'esercizio delle loro funzioni.

Senza autorizzazione della Camera alla quale appartiene, nessun membro del Parlamento può essere sottoposto a procedimento penale; ne può essere arrestato, o altrimenti privato della libertà personale, o sottoposto a perquisizione personale o domiciliare, salvo che sia colto nell'atto di commettere un delitto per il quale è obbligatorio il mandato o l'ordine di cattura.

Eguale autorizzazione è richiesta per trarre in arresto o mantenere in detenzione un membro del Parlamento in esecuzione di una sentenza anche irrevocabile.

Debates:

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05.09.1946	Vol. VII	pp. 925-944	S2
06.09.1946	Vol. VII	pp. 945-958	S2
07.09.1946	Vol. VII	pp. 959-971	S2
19.09.1946	Vol. VII	pp. 1035-1049	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
10.10.1947 pm	Vol. IV	pp. 3205-3221	CA

Art. 69. (66)

I membri del Parlamento ricevono una indennità stabilita dalla legge.

Debates:

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05.09.1946	Vol. VII	pp. 925-944	S2
06.09.1946	Vol. VII	pp. 945-958	S2
07.09.1946	Vol. VII	pp. 959-971	S2
20.09.1946	Vol. VII	pp. 1051-1067	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
10.10.1947 pm	Vol. IV	pp. 3205-3221	CA

Sezione II - La formazione delle leggi
Art. 70. (67)

La funzione legislativa è esercitata collettivamente dalle due Camere.

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05.09.1946	Vol. VII	pp. 925-944	S2
21.09.1946	Vol. VII	pp. 1069-1080	S2
25.09.1946	Vol. VII	pp. 1093-1107	S2
26.09.1946	Vol. VII	pp. 1109-1115	S2
27.09.1946	Vol. VII	pp. 1117-1126	S2
02.10.1946	Vol. VII	pp. 1141-1149	S2
03.10.1946	Vol. VII	pp. 1151-1160	S2
15.10.1946	Vol. VII	pp. 1167-1178	S2
23.10.1946	Vol. VII	pp. 1229-1233	S2
25.10.1946	Vol. VII	pp. 1243-1249	S2
06.11.1946	Vol. VII	pp. 1265-1272	S2
12.11.1946	Vol. VII	pp. 1291-1298	S2
21.12.1946	Vol. VII	pp. 1631-1639	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
10.09.1947	Vol. IV	pp. 2767-2778	CA
17.09.1947 pm	Vol. IV	pp. 2881-2907	CA
14.10.1947 am	Vol. IV	pp. 3225-3238	CA
16.10.1947 am	Vol. IV	pp. 3295-3309	CA
17.10.1947	Vol. IV	pp. 3335-3366	CA
23.10.1947 pm	Vol. IV	pp. 3489-3509	CA

Art. 71. (68)

L'iniziativa delle leggi appartiene al Governo, a ciascun membro delle Camere ed agli organi ed enti ai quali sia conferita da legge costituzionale.

Il popolo esercita l'iniziativa delle leggi, mediante la proposta, da parte di almeno cinquantamila elettori, di un progetto redatto in articoli.

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04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
24.10.1946	Vol. VII	pp. 1235-1241	S2
06.11.1946	Vol. VII	pp. 1265-1272	S2
12.11.1946	Vol. VII	pp. 1291-1298	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
05.03.1947	Vol. I	pp. 167-200	CA
10.03.1947	Vol. I	pp. 287-309	CA
12.03.1947	Vol. I	pp. 341-358	CA
12.09.1947	Vol. IV	pp. 2805-2837	CA
17.09.1947 pm	Vol. IV	pp. 2881-2907	CA
14.10.1947 pm	Vol. IV	pp. 3239-3257	CA
25.10.1947	Vol. IV	pp. 3567-3575	CA

Art. 72. (69, 70)

Ogni disegno di legge, presentato ad una Camera è, secondo le norme del suo regolamento, esaminato da una commissione e poi dalla Camera stessa, che l'approva articolo per articolo e con votazione finale.

Il regolamento stabilisce procedimenti abbreviati per i disegni di legge dei quali è dichiarata l'urgenza.

Puo' altresì stabilire in quali casi e forme l'esame e l'approvazione dei disegni di legge sono deferiti a commissioni, anche permanenti, composte in modo da rispecchiare la proporzione dei gruppi parlamentari. Anche in tali casi, fino al momento della sua approvazione definitiva, il disegno di legge è rimesso alla Camera, se il Governo o un decimo dei componenti della Camera o un quinto della commissione richiedono che sia discusso e votato dalla Camera stessa oppure che sia sottoposto alla sua approvazione finale con sole dichiarazioni di voto. Il regolamento determina le forme di pubblicità dei lavori delle commissioni.

La procedura normale di esame e di approvazione diretta da parte della Camera è sempre adottata per i disegni di legge in materia costituzionale ed elettorale e per quelli di delegazione legislativa, di autorizzazione a ratificare trattati internazionali, di approvazione di bilanci e consuntivi.

Debates:

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05.09.1946	Vol. VII	pp. 925-944	S2
21.09.1946	Vol. VII	pp. 1069-1080	S2
24.10.1946	Vol. VII	pp. 1235-1241	S2
25.10.1946	Vol. VII	pp. 1243-1249	S2
26.10.1946	Vol. VII	pp. 1251-1256	S2
06.11.1946	Vol. VII	pp. 1265-1272	S2
08.11.1946	Vol. VII	pp. 1277-1284	S2
09.11.1946	Vol. VII	pp. 1285-1290	S2
12.11.1946	Vol. VII	pp. 1291-1298	S2
28.01.1947	Vol. VI	pp. 206-213	AP
29.01.1947	Vol. VI	pp. 231-233	AP

06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
10.03.1947	Vol. I	pp. 287-309	CA
12.09.1947	Vol. IV	pp. 2805-2837	CA
17.09.1947 pm	Vol. IV	pp. 2881-2907	CA
18.09.1947 pm	Vol. IV	pp. 2911-2931	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
14.10.1947 pm	Vol. IV	pp. 3239-3257	CA
15.10.1947 am	Vol. IV	pp. 3259-3261	CA
15.10.1947 pm	Vol. IV	pp. 3263-3294	CA
16.10.1947 am	Vol. IV	pp. 3295-3309	CA

Art. 73. (71)

Le leggi sono promulgate dal Presidente della Repubblica entro un mese dall'approvazione.

Se le Camere, ciascuna a maggioranza assoluta dei propri componenti, ne dichiarano l'urgenza, la legge è promulgata nel termine da essa stabilito.

Le leggi sono pubblicate subito dopo la promulgazione ed entrano in vigore il quindicesimo giorno successivo alla loro pubblicazione, salvo che le leggi stesse stabiliscano un termine diverso.

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05.09.1946	Vol. VII	pp. 925-944	S2
21.09.1946	Vol. VII	pp. 1069-1080	S2
26.10.1946	Vol. VII	pp. 1251-1256	S2
08.11.1946	Vol. VII	pp. 1277-1284	S2
09.11.1946	Vol. VII	pp. 1285-1290	S2
21.12.1946	Vol. VII	pp. 1621-1630	S2
21.12.1946	Vol. VII	pp. 1631-1639	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
12.03.1947	Vol. I	pp. 341-358	CA
16.10.1947 am	Vol. IV	pp. 3295-3309	CA
22.10.1947 pm	Vol. IV	pp. 3437-3468	CA
23.10.1947 am	Vol. IV	pp. 3469-3488	CA
23.10.1947 pm	Vol. IV	pp. 3489-3509	CA
29.11.1947 pm	Vol. V	pp. 4259-4273	CA
03.12.1947 am	Vol. V	pp. 4305-4317	CA

Art. 74. (70)

Il Presidente della Repubblica, prima di promulgare la legge, può con messaggio motivato alle Camere chiedere una nuova deliberazione.

Se le Camere approvano nuovamente la legge, questa deve essere promulgata.

Debates:

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04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2

26.10.1946	Vol. VII	pp. 1251-1256	S2
21.12.1946	Vol. VII	pp. 1621-1630	S2
21.12.1946	Vol. VII	pp. 1631-1639	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
14.10.1947 am	Vol. IV	pp. 3225-3238	CA
15.10.1947 pm	Vol. IV	pp. 3263-3294	CA
16.10.1947 am	Vol. IV	pp. 3295-3309	CA
23.10.1947 am	Vol. IV	pp. 3469-3488	CA
03.12.1947 pm	Vol. V	pp. 4319-4346	CA

Art. 75. (70, 72, 73)

È indetto referendum popolare per deliberare l'abrogazione, totale o parziale, di una legge o di un atto avente valore di legge, quando lo richiedono cinquecentomila elettori o cinque Consigli regionali.

Non è ammesso il referendum per le leggi tributarie e di bilancio, di amnistia e di indulto, di autorizzazione a ratificare trattati internazionali.

Hanno diritto di partecipare al referendum tutti i cittadini chiamati ad eleggere la Camera dei deputati.

La proposta soggetta a referendum è approvata se ha partecipato alla votazione la maggioranza degli aventi diritto, e se è raggiunta la maggioranza dei voti validamente espressi.

La legge determina le modalità di attuazione del referendum.

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05.09.1946	Vol. VII	pp. 925-944	S2
24.10.1946	Vol. VII	pp. 1235-1241	S2
26.10.1946	Vol. VII	pp. 1251-1256	S2
21.12.1946	Vol. VII	pp. 1621-1630	S2
21.12.1946	Vol. VII	pp. 1631-1639	S2
17.01.1947	Vol. VII	pp. 1641-1650	S2
18.01.1947	Vol. VII	pp. 1651-1657	S2
20.01.1947	Vol. VII	pp. 1659-1668	S2
21.01.1947	Vol. VII	pp. 1669-1676	S2
22.01.1947	Vol. VII	pp. 1677-1683	S2
29.01.1947	Vol. VI	pp. 231-233	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
05.03.1947	Vol. I	pp. 167-200	CA
08.03.1947	Vol. I	pp. 259-285	CA
10.03.1947	Vol. I	pp. 287-309	CA
11.03.1947	Vol. I	pp. 313-339	CA
13.03.1947	Vol. I	pp. 359-391	CA
20.03.1947	Vol. I	pp. 503-536	CA
11.09.1947 pm	Vol. IV	pp. 2781-2804	CA
17.09.1947 pm	Vol. IV	pp. 2881-2907	CA
18.09.1947 pm	Vol. IV	pp. 2911-2931	CA
14.10.1947 am	Vol. IV	pp. 3225-3238	CA
15.10.1947 pm	Vol. IV	pp. 3263-3294	CA
16.10.1947 am	Vol. IV	pp. 3295-3309	CA

16.10.1947 pm	Vol. IV	pp. 3311-3333	CA
21.10.1947 am	Vol. IV	pp. 3387-3401	CA
23.10.1947 am	Vol. IV	pp. 3469-3488	CA
29.11.1947 pm	Vol. V	pp. 4259-4273	CA
03.12.1947 am	Vol. V	pp. 4305-4317	CA
03.12.1947 pm	Vol. V	pp. 4319-4346	CA

Art. 76. (74)

L'esercizio della funzione legislativa non può essere delegato al Governo se non con determinazione di principi e criteri direttivi e soltanto per tempo limitato e per oggetti definiti.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
09.11.1946	Vol. VII	pp. 1285-1290	S2
12.11.1946	Vol. VII	pp. 1291-1298	S2
21.12.1946	Vol. VII	pp. 1621-1630	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
11.07.1947 pm	Vol. III	pp. 2595-2620	CA
10.09.1947	Vol. IV	pp. 2767-2778	CA
16.09.1947 pm	Vol. IV	pp. 2853-2877	CA
18.09.1947 pm	Vol. IV	pp. 2911-2931	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
16.10.1947 pm	Vol. IV	pp. 3311-3333	CA
28.11.1947 am	Vol. V	pp. 4201-4219	CA

Art. 77.

Il Governo non può, senza delegazione delle Camere, emanare decreti che abbiano valore di legge ordinaria.

Quando, in casi straordinari di necessità e di urgenza, il Governo adotta, sotto la sua responsabilità, provvedimenti provvisori con la forza di legge, deve il giorno stesso presentarli per la conversione alle Camere che, anche se sciolte, sono appositamente convocate e si riuniscono entro cinque giorni.

I decreti perdono efficacia sin dall'inizio, se non sono convertiti in legge entro sessanta giorni dalla loro pubblicazione. Le Camere possono tuttavia regolare con legge i rapporti giuridici sorti sulla base dei decreti non convertiti.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
21.09.1946	Vol. VII	pp. 1069-1080	S2
06.11.1946	Vol. VII	pp. 1265-1272	S2
09.11.1946	Vol. VII	pp. 1285-1290	S2
12.11.1946	Vol. VII	pp. 1291-1298	S2
21.12.1946	Vol. VII	pp. 1621-1630	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
10.09.1947	Vol. IV	pp. 2767-2778	CA

11.09.1947 pm	Vol. IV	pp. 2781-2804	CA
17.09.1947 pm	Vol. IV	pp. 2881-2907	CA
16.10.1947 pm	Vol. IV	pp. 3311-3333	CA
17.10.1947	Vol. IV	pp. 3335-3366	CA
12.12.1947 am	Vol. V	pp. 4485-4496	CA

Art. 78. (75)

Le Camere deliberano lo stato di guerra e conferiscono al Governo i poteri necessari.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
25.09.1946	Vol. VII	pp. 1093-1107	S2
26.09.1946	Vol. VII	pp. 1109-1115	S2
02.10.1946	Vol. VI	pp. 478-480	S1
06.11.1946	Vol. VII	pp. 1265-1272	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
06.03.1947	Vol. I	pp. 203-230	CA
08.03.1947	Vol. I	pp. 259-285	CA
13.03.1947	Vol. I	pp. 359-391	CA
16.09.1947 pm	Vol. IV	pp. 2853-2877	CA
17.10.1947	Vol. IV	pp. 3335-3366	CA
18.10.1947	Vol. IV	pp. 3367-3383	CA
21.10.1947 am	Vol. IV	pp. 3387-3401	CA
21.10.1947 pm	Vol. IV	pp. 3403-3427	CA
03.12.1947 pm	Vol. V	pp. 4319-4346	CA

Art. 79. (75)

L'amnistia e l'indulto sono concessi dal Presidente della Repubblica su legge di delegazione delle Camere.

Non possono applicarsi ai reati commessi successivamente alla proposta di delegazione.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
25.09.1946	Vol. VII	pp. 1093-1107	S2
26.09.1946	Vol. VII	pp. 1109-1115	S2
29.01.1947	Vol. VI	pp. 233-237	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
12.09.1947	Vol. IV	pp. 2805-2837	CA
16.09.1947 pm	Vol. IV	pp. 2853-2877	CA
17.10.1947	Vol. IV	pp. 3335-3366	CA
18.10.1947	Vol. IV	pp. 3367-3383	CA
21.10.1947 am	Vol. IV	pp. 3387-3401	CA
21.10.1947 pm	Vol. IV	pp. 3403-3427	CA

Art. 80. (76)

Le Camere autorizzano con legge la ratifica dei trattati internazionali che sono di natura politica, o prevedono arbitrati o regolamenti giudiziari, o importano variazioni del territorio od oneri alle finanze o modificazioni di leggi.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
23.10.1946	Vol. VII	pp. 1229-1233	S2
21.12.1946	Vol. VII	pp. 1621-1630	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
25.03.1947	Vol. I	pp. 613-664	CA
23.05.1947	Vol. III	pp. 1915-1947	CA
17.10.1947	Vol. IV	pp. 3335-3366	CA

Art. 81. (77)

Le Camere approvano ogni anno i bilanci e il rendiconto consuntivo presentati dal Governo.

L'esercizio provvisorio del bilancio non può essere concesso se non per legge e per periodi non superiori complessivamente a quattro mesi.

Con la legge di approvazione del bilancio non si possono stabilire nuovi tributi e nuove spese.

Ogni altra legge che importi nuove o maggiori spese deve indicare i mezzi per farvi fronte.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
24.09.1946	Vol. VII	pp. 1081-1091	S2
25.09.1946	Vol. VII	pp. 1093-1107	S2
26.09.1946	Vol. VII	pp. 1109-1115	S2
23.10.1946	Vol. VII	pp. 1229-1233	S2
24.10.1946	Vol. VII	pp. 1235-1241	S2
21.12.1946	Vol. VII	pp. 1621-1630	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
23.05.1947	Vol. III	pp. 1915-1947	CA
17.10.1947	Vol. IV	pp. 3335-3366	CA

Art. 82. (78)

Ciascuna Camera può disporre inchieste su materie di pubblico interesse.

A tale scopo nomina fra i propri componenti una commissione formata in modo da rispecchiare la proporzione dei vari gruppi. La commissione di inchiesta procede alle indagini e agli esami con gli stessi poteri e le stesse limitazioni dell'autorità giudiziaria.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
20.09.1946	Vol. VII	pp. 1051-1067	S2
21.09.1946	Vol. VII	pp. 1069-1080	S2
25.09.1946	Vol. VII	pp. 1093-1107	S2
21.12.1946	Vol. VII	pp. 1621-1630	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
10.10.1947 am	Vol. IV	pp. 3187-3203	CA
17.10.1947	Vol. IV	pp. 3335-3366	CA
18.10.1947	Vol. IV	pp. 3367-3383	CA

TITOLO II**Il Presidente della Repubblica****Art. 83. (79)**

Il Presidente della Repubblica è eletto dal Parlamento in seduta comune dei suoi membri.

All'elezione partecipano tre delegati per ogni Regione eletti dal Consiglio regionale in modo che sia assicurata la rappresentanza delle minoranze. La Valle d'Aosta ha un solo delegato.

L'elezione del Presidente della Repubblica ha luogo per scrutinio segreto a maggioranza di due terzi della assemblea. Dopo il terzo scrutinio è sufficiente la maggioranza assoluta.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
19.12.1946	Vol. VIII	pp. 1739-1749	S2i
21.01.1947	Vol. VI	pp. 131-136	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
08.03.1947	Vol. I	pp. 259-285	CA
12.03.1947	Vol. I	pp. 341-358	CA
10.09.1947	Vol. IV	pp. 2767-2778	CA
15.09.1947	Vol. IV	pp. 2841-2850	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
18.10.1947	Vol. IV	pp. 3367-3383	CA
21.10.1947 pm	Vol. IV	pp. 3403-3427	CA
22.10.1947 am	Vol. IV	pp. 3429-3436	CA
22.10.1947 pm	Vol. IV	pp. 3437-3468	CA
23.10.1947 pm	Vol. IV	pp. 3489-3509	CA

Art. 84. (80)

Può essere eletto Presidente della Repubblica ogni cittadino che abbia compiuto cinquanta anni di età e goda dei diritti civili e politici.

L'ufficio di Presidente della Repubblica è incompatibile con qualsiasi altra carica.

L'assegno e la dotazione del Presidente sono determinati per legge.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
19.12.1946	Vol. VIII	pp. 1739-1749	S2i
20.12.1946	Vol. VIII	pp. 1751-1761	S2i
21.01.1947	Vol. VI	pp. 131-136	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
12.03.1947	Vol. I	pp. 341-358	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
22.10.1947 pm	Vol. IV	pp. 3437-3468	CA

Art. 85. (81)

Il Presidente della Repubblica è eletto per sette anni.

Trenta giorni prima che scada il termine, il Presidente della Camera dei deputati convoca in seduta comune il Parlamento e i delegati regionali, per eleggere il nuovo Presidente della Repubblica.

Se le Camere sono sciolte, o manca meno di tre mesi alla loro cessazione, la elezione ha luogo entro quindici giorni dalla riunione delle Camere nuove. Nel frattempo sono prorogati i poteri del Presidente in carica.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
19.12.1946	Vol. VIII	pp. 1739-1749	S2i
21.01.1947	Vol. VI	pp. 131-136	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
12.03.1947	Vol. I	pp. 341-358	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
22.10.1947 pm	Vol. IV	pp. 3437-3468	CA
24.10.1947 pm	Vol. IV	pp. 3525-3565	CA

Art. 86. (82)

Le funzioni del Presidente della Repubblica, in ogni caso che egli non possa adempierle, sono esercitate dal Presidente del Senato.

In caso di impedimento permanente o di morte o di dimissioni del Presidente della Repubblica, il Presidente della Camera dei deputati indice la elezione del nuovo Presidente della Repubblica entro quindici giorni, salvo il maggior termine previsto se le Camere sono sciolte o manca meno di tre mesi alla loro cessazione.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
19.12.1946	Vol. VIII	pp. 1739-1749	S2i
20.12.1946	Vol. VIII	pp. 1751-1761	S2i
21.01.1947	Vol. VI	pp. 131-136	AP
29.01.1947	Vol. VI	pp. 230-231	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
18.10.1947	Vol. IV	pp. 3367-3383	CA
22.10.1947 pm	Vol. IV	pp. 3437-3468	CA

Art. 87. (83)

Il Presidente della Repubblica è il capo dello Stato e rappresenta l'unità nazionale.

Puo inviare messaggi alle Camere.

Indice le elezioni delle nuove Camere e ne fissa la prima riunione.

Autorizza la presentazione alle Camere dei disegni di legge di iniziativa del Governo.

Promulga le leggi ed emana i decreti aventi valore di legge e i regolamenti.

Indice il referendum popolare nei casi previsti dalla Costituzione.

Nomina, nei casi indicati dalla legge, i funzionari dello Stato.

Accredita e riceve i rappresentanti diplomatici, ratifica i trattati internazionali, previa, quando occorra, l'autorizzazione delle Camere.

Ha il comando delle Forze armate, presiede il Consiglio supremo di difesa costituito secondo la legge, dichiara lo stato di guerra deliberato dalle Camere.

Presiede il Consiglio superiore della magistratura.

Può concedere grazia e commutare le pene.

Conferisce le onorificenze della Repubblica.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
20.12.1946	Vol. VIII	pp. 1751-1761	S2i
21.12.1946	Vol. VII	pp. 1621-1630	S2
04.01.1947	Vol. VIII	pp. 1763-1767	S2i
21.01.1947	Vol. VI	pp. 131-136	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
10.03.1947	Vol. I	pp. 287-309	CA
12.03.1947	Vol. I	pp. 341-358	CA
13.03.1947	Vol. I	pp. 359-391	CA
10.09.1947	Vol. IV	pp. 2767-2778	CA
11.09.1947 pm	Vol. IV	pp. 2781-2804	CA
12.09.1947	Vol. IV	pp. 2805-2837	CA
17.09.1947 pm	Vol. IV	pp. 2881-2907	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
16.10.1947 am	Vol. IV	pp. 3295-3309	CA
21.10.1947 am	Vol. IV	pp. 3387-3401	CA

22.10.1947 pm	Vol. IV	pp. 3437-3468	CA
23.10.1947 am	Vol. IV	pp. 3469-3488	CA
23.10.1947 pm	Vol. IV	pp. 3489-3509	CA
26.11.1947 am	Vol. V	pp. 4093-4113	CA

Art. 88. (84)

Il Presidente della Repubblica può, sentiti i loro Presidenti, sciogliere le Camere o anche una sola di esse.

Non può esercitare tali facoltà negli ultimi sei mesi del suo mandato.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
06.11.1946	Vol. VII	pp. 1265-1272	S2
21.12.1946	Vol. VII	pp. 1621-1630	S2
21.12.1946	Vol. VII	pp. 1631-1639	S2
04.01.1947 am	Vol. VIII	pp. 1763-1767	S2i
04.01.1947 pm	Vol. VIII	pp. 1769-1778	S2i
11.01.1947	Vol. VIII	pp. 1837-1842	S2i
13.01.1947 pm	Vol. VIII	pp. 1849-1857	S2i
14.01.1947	Vol. VIII	pp. 1859-1869	S2i
21.01.1947	Vol. VI	pp. 131-136	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
12.03.1947	Vol. I	pp. 341-358	CA
11.09.1947 pm	Vol. IV	pp. 2781-2804	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
21.10.1947 pm	Vol. IV	pp. 3403-3427	CA
22.10.1947 pm	Vol. IV	pp. 3437-3468	CA
23.10.1947 am	Vol. IV	pp. 3469-3488	CA
23.10.1947 pm	Vol. IV	pp. 3489-3509	CA
24.10.1947 pm	Vol. IV	pp. 3525-3565	CA

Art. 89. (85)

Nessun atto del Presidente della Repubblica è valido se non è controfirmato dai ministri proponenti, che ne assumono la responsabilità.

Gli atti che hanno valore legislativo e gli altri indicati dalla legge sono controfirmati anche dal Presidente del Consiglio dei ministri.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
04.01.1947	Vol. VIII	pp. 1769-1778	S2i
21.01.1947	Vol. VI	pp. 131-136	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
11.09.1947 pm	Vol. IV	pp. 2781-2804	CA
18.09.1947 pm	Vol. IV	pp. 2911-2931	CA

19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
21.10.1947 pm	Vol. IV	pp. 3403-3427	CA
22.10.1947 pm	Vol. IV	pp. 3437-3468	CA
23.10.1947 pm	Vol. IV	pp. 3489-3509	CA
03.12.1947 am	Vol. V	pp. 4305-4317	CA

Art. 90. (85)

Il Presidente della Repubblica non è responsabile degli atti compiuti nell'esercizio delle sue funzioni, tranne che per alto tradimento o per attentato alla Costituzione. In tali casi è messo in stato di accusa dal Parlamento in seduta comune, a maggioranza assoluta dei suoi membri.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
04.01.1947	Vol. VIII	pp. 1769-1778	S2i
21.01.1947	Vol. VI	pp. 131-136	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
10.03.1947	Vol. I	pp. 287-309	CA
11.09.1947 pm	Vol. IV	pp. 2781-2804	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
22.10.1947 pm	Vol. IV	pp. 3437-3468	CA
23.10.1947 pm	Vol. IV	pp. 3489-3509	CA
24.10.1947 am	Vol. IV	pp. 3511-3524	CA

Art. 91.

Il Presidente della Repubblica, prima di assumere le sue funzioni, presta giuramento di fedeltà alla Repubblica e di osservanza della Costituzione dinanzi al Parlamento in seduta comune.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.09.1946	Vol. VII	pp. 911-923	S2
05.09.1946	Vol. VII	pp. 925-944	S2
19.12.1946	Vol. VIII	pp. 1739-1749	S2i
21.01.1947	Vol. VI	pp. 131-136	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
14.10.1947 am	Vol. IV	pp. 3225-3238	CA
22.10.1947 pm	Vol. IV	pp. 3437-3468	CA

TITOLO III

Il Governo

Sezione I - Il Consiglio dei ministri

Art. 92. (86)

Il Governo della Repubblica è composto del Presidente del Consiglio e dei ministri, che costituiscono insieme il Consiglio dei ministri.

Il Presidente della Repubblica nomina il Presidente del Consiglio dei ministri e, su proposta di questo, i ministri.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.01.1947	Vol. VIII	pp. 1769-1778	S2i
08.01.1947	Vol. VIII	pp. 1797-1803	S2i
09.01.1947	Vol. VIII	pp. 1805-1816	S2i
10.01.1947	Vol. VIII	pp. 1823-1835	S2i
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
23.10.1947 am	Vol. IV	pp. 3469-3488	CA
23.10.1947 pm	Vol. IV	pp. 3489-3509	CA
24.10.1947 pm	Vol. IV	pp. 3525-3565	CA

Art. 93. (86-bis)

Il Presidente del Consiglio dei ministri e i ministri, prima di assumere le funzioni, prestano giuramento nelle mani del Presidente della Repubblica.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
25.10.1947	Vol. IV	pp. 3567-3575	CA

Art. 94. (87, 88)

Il Governo deve avere la fiducia delle due Camere.

Ciascuna Camera accorda o revoca la fiducia mediante mozione motivata e votata per appello nominale.

Entro dieci giorni dalla sua formazione il Governo si presenta alle Camere per ottenere la fiducia.

Il voto contrario di una o d'entrambe le Camere su una proposta del Governo non importa obbligo di dimissioni.

La mozione di sfiducia deve essere firmata da almeno un decimo dei componenti della Camera e non può essere messa in discussione prima di tre giorni dalla sua presentazione.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
06.11.1946	Vol. VII	pp. 1265-1272	S2
04.01.1947	Vol. VIII	pp. 1769-1778	S2i
07.01.1947	Vol. VIII	pp. 1785-1788	S2i
08.01.1947	Vol. VIII	pp. 1789-1795	S2i
09.01.1947	Vol. VIII	pp. 1805-1816	S2i
10.01.1947	Vol. VIII	pp. 1817-1822	S2i
13.01.1947am	Vol. VIII	pp. 1843-1848	S2i
13.01.1947pm	Vol. VIII	pp. 1849-1857	S2i
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
05.03.1947	Vol. I	pp. 167-200	CA
08.03.1947	Vol. I	pp. 259-285	CA
11.03.1947	Vol. I	pp. 313-339	CA
12.03.1947	Vol. I	pp. 341-358	CA
13.03.1947	Vol. I	pp. 359-391	CA
10.09.1947	Vol. IV	pp. 2767-2778	CA
12.09.1947	Vol. IV	pp. 2805-2837	CA
17.09.1947 pm	Vol. IV	pp. 2881-2907	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
18.10.1947	Vol. IV	pp. 3367-3383	CA
23.10.1947 am	Vol. IV	pp. 3469-3488	CA
24.10.1947 am	Vol. IV	pp. 3511-3524	CA
24.10.1947 pm	Vol. IV	pp. 3525-3565	CA

Art. 95. (89)

Il Presidente del Consiglio dei ministri dirige la politica generale del Governo e ne è responsabile. Mantiene l'unità di indirizzo politico ed amministrativo, promuovendo e coordinando l'attività dei ministri.

I ministri sono responsabili collegialmente degli atti del Consiglio dei ministri, e individualmente degli atti dei loro dicasteri.

La legge provvede all'ordinamento della Presidenza del Consiglio e determina il numero, le attribuzioni e l'organizzazione dei ministeri.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
04.01.1947	Vol. VIII	pp. 1769-1778	S2i
07.01.1947	Vol. VIII	pp. 1779-1784	S2i
08.01.1947	Vol. VIII	pp. 1797-1803	S2i
09.01.1947	Vol. VIII	pp. 1805-1816	S2i
10.01.1947	Vol. VIII	pp. 1823-1835	S2i
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
18.09.1947 pm	Vol. IV	pp. 2911-2931	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
24.10.1947 pm	Vol. IV	pp. 3525-3565	CA
12.11.1947 pm	Vol. V	pp. 3805-3832	CA

Art. 96. (90)

Il Presidente del Consiglio dei ministri e i ministri sono posti in stato d'accusa dal Parlamento in seduta comune per reati commessi nell'esercizio delle loro funzioni.

Debates:

03.09.1946	Vol. VII	pp. 895-909	S2
11.01.1947	Vol. VIII	pp. 1837-1842	S2i
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
10.03.1947	Vol. I	pp. 287-309	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
24.10.1947 pm	Vol. IV	pp. 3525-3565	CA

Sezione II - La Pubblica Amministrazione
Art. 97. (91)

I pubblici uffici sono organizzati secondo disposizioni di legge, in modo che siano assicurati il buon andamento e l'imparzialità dell'amministrazione.

Nell'ordinamento degli uffici sono determinate le sfere di competenza, le attribuzioni e le responsabilità proprie dei funzionari.

Agli impieghi nelle pubbliche amministrazioni si accede mediante concorso, salvo i casi stabiliti dalla legge.

Debates:

30.07.1946	Vol. VII	p. 855	S2
06.09.1946	Vol. VII	pp. 945-958	S2
13.09.1946	Vol. VII	pp. 995-1005	S2
20.09.1946	Vol. VIII	pp. 2127-2133	S3
25.09.1946	Vol. VII	pp. 1093-1107	S2
27.09.1946	Vol. VII	pp. 1117-1126	S2
09.01.1947	Vol. VIII	pp. 1983-1990	S2ii
14.01.1947	Vol. VIII	pp. 1859-1869	S2i
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
24.10.1947 pm	Vol. IV	pp. 3525-3565	CA

Art. 98. (91, 94)

I pubblici impiegati sono al servizio esclusivo della Nazione.

Se sono membri del Parlamento, non possono conseguire promozioni se non per anzianità.

Si possono con legge stabilire limitazioni al diritto d'isciversi ai partiti politici per i magistrati, i militari di carriera in servizio attivo, i funzionari ed agenti di polizia, i rappresentanti diplomatici e consolari all'estero.

Debates:

30.07.1946	Vol. VII	p. 855	S2
06.09.1946	Vol. VII	pp. 945-958	S2
13.09.1946	Vol. VII	pp. 995-1005	S2

25.09.1946	Vol. VII	pp. 1093-1107	S2
20.12.1946	Vol. VIII	pp. 1961-1966	S2ii
08.01.1947	Vol. VIII	pp. 1967-1974	S2ii
09.01.1947	Vol. VIII	pp. 1983-1990	S2ii
14.01.1947	Vol. VIII	pp. 1859-1869	S2i
15.01.1947	Vol. VIII	pp. 1871-1879	S2i
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
24.10.1947 pm	Vol. IV	pp. 3525-3565	CA
13.11.1947 am	Vol. V	pp. 3833-3853	CA
14.11.1947 pm	Vol. V	pp. 3873-3894	CA
20.11.1947 pm	Vol. V	pp. 3925-3963	CA
05.12.1947 am	Vol. V	pp. 4401-4415	CA

Sezione III - Gli organi ausiliari

Art. 99. (92)

Il Consiglio nazionale dell'economia e del lavoro è composto, nei modi stabiliti dalla legge, di esperti e di rappresentanti delle categorie produttive, in misura che tenga conto della loro importanza numerica e qualitativa.

È organo di consulenza delle Camere e del Governo per le materie e secondo le funzioni che gli sono attribuite dalla legge.

Ha l'iniziativa legislativa e può contribuire alla elaborazione della legislazione economica e sociale secondo i principi ed entro i limiti stabiliti dalla legge.

Debates:

20.12.1946	Vol. VIII	pp. 1751-1761	S2i
28.01.1947	Vol. VII	pp. 1719-1726	S2
30.01.1947	Vol. VII	pp. 1727-1736	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
25.10.1947	Vol. IV	pp. 3567-3575	CA

Art. 100. (93)

Il Consiglio di Stato è organo di consulenza giuridico-amministrativa e di tutela della giustizia nell'amministrazione.

La Corte dei Conti esercita il controllo preventivo di legittimità sugli atti del Governo, e anche quello successivo sulla gestione del bilancio dello Stato. Partecipa, nei casi e nelle forme stabiliti dalla legge, al controllo sulla gestione finanziaria degli enti a cui lo Stato contribuisce in via ordinaria. Riferisce direttamente alle Camere sul risultato del riscontro eseguito.

La legge assicura l'indipendenza dei due istituti e dei loro componenti di fronte al Governo.

Debates:

20.12.1946	Vol. VIII	pp. 1751-1761	S2i
10.01.1947	Vol. VIII	pp. 2005-2012	S2ii
27.01.1947	Vol. VII	pp. 1707-1717	S2

30.01.1947	Vol. VII	pp. 1727-1736	S2
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
18.09.1947 pm	Vol. IV	pp. 2911-2931	CA
19.09.1947 pm	Vol. IV	pp. 2935-2970	CA
25.10.1947	Vol. IV	pp. 3567-3575	CA
08.11.1947	Vol. V	pp. 3717-3739	CA
20.11.1947 pm	Vol. V	pp. 3925-3963	CA
04.12.1947 pm	Vol. V	pp. 4367-4399	CA

TITOLO IV

La Magistratura

Discussioni Generali

23.05.1947	Vol. III	pp. 1915-1947	CA
06.11.1947 pm	Vol. V	pp. 3659-3680	CA
07.11.1947 am	Vol. V	pp. 3681-3692	CA
07.11.1947 pm	Vol. V	pp. 3693-3716	CA
08.11.1947	Vol. V	pp. 3717-3739	CA
11.11.1947 am	Vol. V	pp. 3743-3756	CA
11.11.1947 pm	Vol. V	pp. 3757-3788	CA
12.11.1947 am	Vol. V	pp. 3789-3803	CA
12.11.1947 pm	Vol. V	pp. 3805-3832	CA
13.11.1947 am	Vol. V	pp. 3833-3853	CA
14.11.1947 am	Vol. V	pp. 3857-3871	CA
14.11.1947 pm	Vol. V	pp. 3873-3894	CA
15.11.1947	Vol. V	pp. 3895-3919	CA
20.11.1947 pm	Vol. V	pp. 3925-3963	CA

Sezione I - Ordinamento giurisdizionale

Art. 101. (94)

La giustizia è amministrata in nome del popolo.

I giudici sono soggetti soltanto alla legge.

Debates:

05.12.1946	Vol. VIII	pp. 1889-1897	S2ii
06.12.1946	Vol. VIII	pp. 1899-1902	S2ii
12.12.1946	Vol. VIII	pp. 1903-1911	S2ii
13.12.1946	Vol. VIII	pp. 1913-1920	S2ii
17.12.1946	Vol. VIII	pp. 1929-1934	S2ii
19.12.1946	Vol. VIII	pp. 1941-1950	S2ii
11.01.1947	Vol. VIII	pp. 2013-2016	S2ii
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA
08.03.1947	Vol. I	pp. 259-285	CA
13.03.1947	Vol. I	pp. 359-391	CA

21.03.1947	Vol. I	pp. 537-561	CA
06.11.1947 pm	Vol. V	pp. 3659-3680	CA
07.11.1947 am	Vol. V	pp. 3681-3692	CA
07.11.1947 pm	Vol. V	pp. 3693-3716	CA
08.11.1947	Vol. V	pp. 3717-3739	CA
11.11.1947 am	Vol. V	pp. 3743-3756	CA
11.11.1947 pm	Vol. V	pp. 3757-3788	CA
12.11.1947 am	Vol. V	pp. 3789-3803	CA
12.11.1947 pm	Vol. V	pp. 3805-3832	CA
13.11.1947 am	Vol. V	pp. 3833-3853	CA
20.11.1947 pm	Vol. V	pp. 3925-3963	CA
21.11.1947 pm	Vol. V	pp. 3967-3994	CA
26.11.1947 am	Vol. V	pp. 4093-4113	CA

Art. 102. (95, 96)

La funzione giurisdizionale è esercitata da magistrati ordinari istituiti e regolati dalle norme sull'ordinamento giudiziario.

Non possono essere istituiti giudici straordinari o giudici speciali. Possono soltanto istituirsi presso gli organi giudiziari ordinari sezioni specializzate per determinate materie, anche con la partecipazione di cittadini idonei estranei alla magistratura.

La legge regola i casi e le forme della partecipazione diretta del popolo all'amministrazione della giustizia.

Debates:

05.12.1946	Vol. VIII	pp. 1889-1897	S2ii
06.12.1946	Vol. VIII	pp. 1899-1902	S2ii
13.12.1946	Vol. VIII	pp. 1913-1920	S2ii
14.12.1946	Vol. VIII	pp. 1921-1927	S2ii
17.12.1946	Vol. VIII	pp. 1929-1934	S2ii
18.12.1946	Vol. VIII	pp. 1935-1940	S2ii
19.12.1946	Vol. VIII	pp. 1941-1950	S2ii
20.12.1946	Vol. VIII	pp. 1951-1959	S2ii
11.01.1947	Vol. VIII	pp. 2013-2016	S2ii
27.01.1947	Vol. VIII	pp. 2067-2069	S2ii
31.01.1947	Vol. VI	pp. 251-256	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
18.09.1947 pm	Vol. IV	pp. 2911-2931	CA
06.11.1947 pm	Vol. V	pp. 3659-3680	CA
07.11.1947 pm	Vol. V	pp. 3693-3716	CA
08.11.1947	Vol. V	pp. 3717-3739	CA
11.11.1947 am	Vol. V	pp. 3743-3756	CA
11.11.1947 pm	Vol. V	pp. 3757-3788	CA
12.11.1947 am	Vol. V	pp. 3789-3803	CA
12.11.1947 pm	Vol. V	pp. 3805-3832	CA
13.11.1947 am	Vol. V	pp. 3833-3853	CA
14.11.1947 am	Vol. V	pp. 3857-3871	CA
15.11.1947	Vol. V	pp. 3895-3919	CA
20.11.1947 pm	Vol. V	pp. 3925-3963	CA
21.11.1947 pm	Vol. V	pp. 3967-3994	CA
22.11.1947 pm	Vol. V	pp. 3997-4005	CA

24.11.1947 am	Vol. V	pp. 4007-4021	CA
24.11.1947 pm	Vol. V	pp. 4023-4041	CA
27.11.1947 am	Vol. V	pp. 4141-4156	CA
27.11.1947 pm	Vol. V	pp. 4157-4199	CA
05.12.1947 pm	Vol. V	pp. 4417-4452	CA

Art. 103. (95)

Il Consiglio di Stato e gli altri organi di giustizia amministrativa hanno giurisdizione per la tutela nei confronti della pubblica amministrazione degli interessi legittimi e, in particolari materie indicate dalla legge, anche dei diritti soggettivi.

La Corte dei Conti ha giurisdizione nelle materie di contabilità pubblica e nelle altre specificate dalla legge.

I tribunali militari in tempo di guerra hanno la giurisdizione stabilita dalla legge. In tempo di pace hanno giurisdizione soltanto per i reati militari commessi da appartenenti alle Forme armate.

Debates:

05.12.1946	Vol. VIII	pp. 1889-1897	S2ii
06.12.1946	Vol. VIII	pp. 1899-1902	S2ii
12.12.1946	Vol. VIII	pp. 1903-1911	S2ii
17.12.1946	Vol. VIII	pp. 1929-1934	S2ii
18.12.1946	Vol. VIII	pp. 1935-1940	S2ii
19.12.1946	Vol. VIII	pp. 1941-1950	S2ii
09.01.1947	Vol. VIII	pp. 1983-1990	S2ii
10.01.1947	Vol. VIII	pp. 2005-2012	S2ii
11.01.1947	Vol. VIII	pp. 2013-2016	S2ii
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
18.09.1947 pm	Vol. IV	pp. 2911-2931	CA
08.11.1947	Vol. V	pp. 3717-3739	CA
11.11.1947 am	Vol. V	pp. 3743-3756	CA
11.11.1947 pm	Vol. V	pp. 3757-3788	CA
13.11.1947 am	Vol. V	pp. 3833-3853	CA
21.11.1947 pm	Vol. V	pp. 3967-3994	CA
22.11.1947 pm	Vol. V	pp. 3997-4005	CA
27.11.1947 pm	Vol. V	pp. 4157-4199	CA
05.12.1947 pm	Vol. V	pp. 4417-4452	CA

Art. 104. (97)

La magistratura costituisce un ordine autonomo e indipendente da ogni altro potere.

Il Consiglio superiore della magistratura è presieduto dal Presidente della Repubblica.

Ne fanno parte di diritto il primo presidente e il procuratore generale della Corte di cassazione.

Gli altri componenti sono eletti per due terzi da tutti i magistrati ordinari tra gli appartenenti alle varie categorie, e per un terzo dal Parlamento in seduta comune tra professori ordinari di università in materie giuridiche ed avvocati dopo quindici anni di esercizio.

Il Consiglio elegge un vicepresidente fra i componenti designati dal Parlamento.

I membri elettivi del Consiglio durano in carica quattro anni e non sono immediatamente rieleggibili.

Non possono, finché sono in carica, essere iscritti negli albi professionali, né far parte del Parlamento o di un Consiglio regionale.

Debates:

05.12.1946	Vol. VIII	pp. 1889-1897	S2ii
06.12.1946	Vol. VIII	pp. 1899-1902	S2ii
18.12.1946	Vol. VIII	pp. 1935-1940	S2ii
20.12.1946	Vol. VIII	pp. 1961-1966	S2ii
08.01.1947	Vol. VIII	pp. 1967-1974	S2ii
09.01.1947	Vol. VIII	pp. 1975-1981	S2ii
10.01.1947	Vol. VIII	pp. 2005-2012	S2ii
11.01.1947	Vol. VIII	pp. 2013-2016	S2ii
31.01.1947	Vol. VI	pp. 256-259	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
11.03.1947	Vol. I	pp. 313-339	CA
12.03.1947	Vol. I	pp. 341-358	CA
18.10.1947	Vol. IV	pp. 3367-3383	CA
22.10.1947 pm	Vol. IV	pp. 3437-3468	CA
06.11.1947 pm	Vol. V	pp. 3659-3680	CA
07.11.1947 am	Vol. V	pp. 3681-3692	CA
07.11.1947 pm	Vol. V	pp. 3693-3716	CA
08.11.1947	Vol. V	pp. 3717-3739	CA
11.11.1947 am	Vol. V	pp. 3743-3756	CA
11.11.1947 pm	Vol. V	pp. 3757-3788	CA
12.11.1947 pm	Vol. V	pp. 3805-3832	CA
13.11.1947 am	Vol. V	pp. 3833-3853	CA
14.11.1947 am	Vol. V	pp. 3857-3871	CA
14.11.1947 pm	Vol. V	pp. 3873-3894	CA
20.11.1947 pm	Vol. V	pp. 3925-3963	CA
21.11.1947 pm	Vol. V	pp. 3967-3994	CA
24.11.1947 pm	Vol. V	pp. 4023-4041	CA
25.11.1947 am	Vol. V	pp. 4043-4067	CA
25.11.1947 pm	Vol. V	pp. 4069-4091	CA
26.11.1947 pm	Vol. V	pp. 4115-4139	CA

Art. 105. (97)

Spettano al Consiglio superiore della magistratura, secondo le norme dell'ordinamento giudiziario, le assunzioni, le assegnazioni ed i trasferimenti, le promozioni e i provvedimenti disciplinari nei riguardi dei magistrati.

Debates:

05.12.1946	Vol. VIII	pp. 1889-1897	S2ii
06.12.1946	Vol. VIII	pp. 1899-1902	S2ii
08.01.1947	Vol. VIII	pp. 1967-1974	S2ii
11.01.1947	Vol. VIII	pp. 2013-2016	S2ii
30.01.1947	Vol. VI	pp. 239-246	AP

06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
08.03.1947	Vol. I	pp. 259-285	CA
11.11.1947 am	Vol. V	pp. 3743-3756	CA
21.11.1947 pm	Vol. V	pp. 3967-3994	CA
25.11.1947 pm	Vol. V	pp. 4069-4091	CA

Art. 106. (98)

Le nomine dei magistrati hanno luogo per concorso.

La legge sull'ordinamento giudiziario può ammettere la nomina, anche elettiva, di magistrati onorari per tutte le funzioni attribuite a giudici singoli.

Su designazione del Consiglio superiore della magistratura possono essere chiamati all'ufficio di consiglieri di cassazione, per meriti insigni, professori ordinari di università in materie giuridiche e avvocati che abbiano quindici anni d'esercizio e siano iscritti negli albi speciali per le giurisdizioni superiori.

Debates:

05.12.1946	Vol. VIII	pp. 1889-1897	S2ii
06.12.1946	Vol. VIII	pp. 1899-1902	S2ii
18.12.1946	Vol. VIII	pp. 1935-1940	S2ii
19.12.1946	Vol. VIII	pp. 1941-1950	S2ii
08.01.1947	Vol. VIII	pp. 1967-1974	S2ii
09.01.1947	Vol. VIII	pp. 1983-1990	S2ii
10.01.1947	Vol. VIII	pp. 1991-2003	S2ii
11.01.1947	Vol. VIII	pp. 2013-2016	S2ii
31.01.1947	Vol. VI	pp. 261-264	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
18.03.1947 pm	Vol. I	pp. 479-502	CA
08.11.1947	Vol. V	pp. 3717-3739	CA
11.11.1947 pm	Vol. V	pp. 3757-3788	CA
20.11.1947 pm	Vol. V	pp. 3925-3963	CA
21.11.1947 pm	Vol. V	pp. 3967-3994	CA
26.11.1947 am	Vol. V	pp. 4093-4113	CA
03.12.1947 am	Vol. V	pp. 4305-4317	CA

Art. 107. (99)

I magistrati sono inamovibili. Non possono essere dispensati o sospesi dal servizio né destinati ad altre sedi o funzioni se non in seguito a decisione del Consiglio superiore della magistratura, adottata o per i motivi e con le garanzie di difesa stabilite dall'ordinamento giudiziario o con il loro consenso.

Il Ministro della giustizia ha facoltà di promuovere l'azione disciplinare.

I magistrati si distinguono fra loro soltanto per diversità di funzioni.

Il pubblico ministero gode delle garanzie stabilite nei suoi riguardi dalle norme sull'ordinamento giudiziario.

Debates:

05.12.1946	Vol. VIII	pp. 1889-1897	S2ii
06.12.1946	Vol. VIII	pp. 1899-1902	S2ii
19.12.1946	Vol. VIII	pp. 1941-1950	S2ii

10.01.1947	Vol. VIII	pp. 1991-2003	S2ii
10.01.1947	Vol. VIII	pp. 2005-2012	S2ii
11.01.1947	Vol. VIII	pp. 2013-2016	S2ii
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
07.11.1947 am	Vol. V	pp. 3681-3692	CA
08.11.1947	Vol. V	pp. 3717-3739	CA
14.11.1947 pm	Vol. V	pp. 3873-3894	CA
21.11.1947 pm	Vol. V	pp. 3967-3994	CA
26.11.1947 am	Vol. V	pp. 4093-4113	CA
26.11.1947 pm	Vol. V	pp. 4115-4139	CA
27.11.1947 pm	Vol. V	pp. 4157-4199	CA

Art. 108.

Le norme sull'ordinamento giudiziario e su ogni magistratura sono stabilite con legge.

La legge assicura l'indipendenza dei giudici delle giurisdizioni speciali, del pubblico ministero presso di esse, e degli estranei che partecipano all'amministrazione della giustizia.

Debates:

05.12.1946	Vol. VIII	pp. 1889-1897	S2ii
06.12.1946	Vol. VIII	pp. 1899-1902	S2ii
17.12.1946	Vol. VIII	pp. 1929-1934	S2ii
10.01.1947	Vol. VIII	pp. 1991-2003	S2ii
10.01.1947	Vol. VIII	pp. 2005-2012	S2ii
11.01.1947	Vol. VIII	pp. 2013-2016	S2ii
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
06.11.1947 pm	Vol. V	pp. 3659-3680	CA
26.11.1947 am	Vol. V	pp. 4093-4113	CA

Art. 109. (100)

L'autorità giudiziaria dispone direttamente della polizia giudiziaria.

Debates:

05.12.1946	Vol. VIII	pp. 1889-1897	S2ii
06.12.1946	Vol. VIII	pp. 1899-1902	S2ii
10.01.1947	Vol. VIII	pp. 1991-2003	S2ii
10.01.1947	Vol. VIII	pp. 2005-2012	S2ii
11.01.1947	Vol. VIII	pp. 2013-2016	S2ii
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
07.11.1947 pm	Vol. V	pp. 3693-3716	CA
11.11.1947 pm	Vol. V	pp. 3757-3788	CA
26.11.1947 pm	Vol. V	pp. 4115-4139	CA

Art. 110.

Ferme le competenze del Consiglio superiore della magistratura, spettano al Ministro della giustizia l'organizzazione e il funzionamento dei servizi relativi alla giustizia.

Debates:

05.12.1946	Vol. VIII	pp. 1889-1897	S2ii
06.12.1946	Vol. VIII	pp. 1899-1902	S2ii
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA

Sezione II - Norme sulla giurisdizione
Art. 111. (101, 102)

Tutti i provvedimenti giurisdizionali devono essere motivati.

Contro le sentenze e contro i provvedimenti sulla libertà personale, pronunciati dagli organi giurisdizionali ordinari o speciali, è sempre ammesso ricorso in Cassazione per violazione di legge. Si può derogare a tale norma soltanto per le sentenze dei tribunali militari in tempo di guerra.

Contro le decisioni del Consiglio di Stato e della Corte dei Conti il ricorso in Cassazione è ammesso per i soli motivi inerenti alla giurisdizione.

Debates:

05.12.1946	Vol. VIII	pp. 1889-1897	S2ii
06.12.1946	Vol. VIII	pp. 1899-1902	S2ii
13.12.1946	Vol. VIII	pp. 1913-1920	S2ii
14.12.1946	Vol. VIII	pp. 1921-1927	S2ii
11.01.1947	Vol. VIII	pp. 2013-2016	S2ii
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
08.11.1947	Vol. V	pp. 3717-3739	CA
12.11.1947 am	Vol. V	pp. 3789-3803	CA
12.11.1947 pm	Vol. V	pp. 3805-3832	CA
13.11.1947 am	Vol. V	pp. 3833-3853	CA
15.11.1947	Vol. V	pp. 3895-3919	CA
21.11.1947 pm	Vol. V	pp. 3967-3994	CA
24.11.1947 pm	Vol. V	pp. 4023-4041	CA
26.11.1947 pm	Vol. V	pp. 4115-4139	CA
27.11.1947 am	Vol. V	pp. 4141-4156	CA
27.11.1947 pm	Vol. V	pp. 4157-4199	CA
05.12.1947 pm	Vol. V	pp. 4417-4452	CA

Art. 112. (101)

Il pubblico ministero ha l'obbligo di esercitare l'azione penale.

Debates:

05.12.1946	Vol. VIII	pp. 1889-1897	S2ii
06.12.1946	Vol. VIII	pp. 1899-1902	S2ii
10.01.1947	Vol. VIII	pp. 1991-2003	S2ii

11.01.1947	Vol. VIII	pp. 2013-2016	S2ii
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
08.11.1947	Vol. V	pp. 3717-3739	CA
27.11.1947 am	Vol. V	pp. 4141-4156	CA
22.12.1947 am	Vol. V	pp. 4579-4595	CA

Art. 113. (103)

Contro gli atti della pubblica amministrazione è sempre ammessa la tutela giurisdizionale dei diritti e degli interessi legittimi dinanzi agli organi di giurisdizione ordinaria o amministrativa.

Tale tutela giurisdizionale non può essere esclusa o limitata a particolari mezzi di impugnazione o per determinate categorie di atti.

La legge determina quali organi di giurisdizione possono annullare gli atti della pubblica amministrazione nei casi e con gli effetti previsti dalla legge stessa.

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06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
15.04.1947 am	Vol. I	pp. 887-911	CA
08.11.1947	Vol. V	pp. 3717-3739	CA
26.11.1947 pm	Vol. V	pp. 4115-4139	CA
27.11.1947 pm	Vol. V	pp. 4157-4199	CA
22.12.1947 am	Vol. V	pp. 4579-4595	CA

TITOLO V

Le Regioni, le Province, i Comuni

Discussioni Generali

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10.06.1947 am	Vol. III	pp. 2277-2290	CA
12.06.1947 am	Vol. III	pp. 2297-2316	CA
13.06.1947 am	Vol. III	pp. 2321-2344	CA

Art. 114. (107)

La Repubblica si riparte in Regioni, Provincie e Comuni.

Debates:

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17.01.1947	Vol. VI	pp. 117-130	AP
31.01.1947	Vol. VI	pp. 267-272	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
08.03.1947	Vol. I	pp. 259-285	CA
11.03.1947	Vol. I	pp. 313-339	CA
21.03.1947	Vol. I	pp. 537-561	CA
27.05.1947	Vol. III	pp. 1949-1983	CA
03.06.1947	Vol. III	pp. 2103-2136	CA
04.06.1947 am	Vol. III	pp. 2137-2152	CA
06.06.1947 am	Vol. III	pp. 2179-2201	CA
06.06.1947 pm	Vol. III	pp. 2203-2238	CA
10.06.1947 am	Vol. III	pp. 2277-2290	CA
27.06.1947	Vol. III	pp. 2393-2434	CA
17.07.1947 pm	Vol. III	pp. 2685-2712	CA
09.10.1947 pm	Vol. IV	pp. 3157-3186	CA

Art. 115. (108)

Le Regioni sono costituite in enti autonomi con propri poteri e funzioni secondo i principi fissati nella Costituzione.

Debates:

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18.12.1946	Vol. VII	pp. 1299-1595	S2
17.01.1947	Vol. VI	pp. 117-130	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
05.03.1947	Vol. I	pp. 167-200	CA
31.05.1947	Vol. III	pp. 2089-2101	CA
12.06.1947 am	Vol. III	pp. 2297-2316	CA
13.06.1947 am	Vol. III	pp. 2321-2344	CA
27.06.1947	Vol. III	pp. 2393-2434	CA
01.07.1947 pm	Vol. III	pp. 2443-2468	CA

Art. 116. (108)

Alla Sicilia, alla Sardegna, al Trentino-Alto Adige, al Friuli-Venezia Giulia e alla Valle d'Aosta sono attribuite forme e condizioni particolari di autonomia, secondo statuti speciali adottati con leggi costituzionali.

Debates:

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06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
06.03.1947	Vol. I	pp. 203-230	CA
29.05.1947	Vol. III	pp. 2019-2057	CA
31.05.1947	Vol. III	pp. 2089-2101	CA
12.06.1947 am	Vol. III	pp. 2297-2316	CA
13.06.1947 am	Vol. III	pp. 2321-2344	CA
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01.07.1947 pm	Vol. III	pp. 2443-2468	CA
04.07.1947 pm	Vol. III	pp. 2499-2524	CA
30.10.1947 am	Vol. IV	pp. 3635-3647	CA

Art. 117. (109, 110, 111)

La Regione emana per le seguenti materie norme legislative nei limiti dei principi fondamentali stabiliti dalle leggi dello Stato, sempreché le norme stesse non siano in contrasto con l'interesse nazionale e con quello di altre Regioni:

- * ordinamento degli uffici e degli enti amministrativi dipendenti dalla Regione;
- * circoscrizioni comunali;
- * polizia locale urbana e rurale;
- * fiere e mercati;
- * beneficenza pubblica ed assistenza sanitaria ed ospedaliera;
- * istruzione artigiana e professionale e assistenza scolastica;
- * musei e biblioteche di enti locali;
- * urbanistica;
- * turismo e industria alberghiera;
- * tramvie e linee automobilistiche d'interesse regionale;
- * viabilità, acquedotti e lavori pubblici di interesse regionale;

- * navigazione e porti lacuali;
- * acque minerali e termali;
- * cave e torbiere;
- * caccia;
- * pesca nelle acque interne;
- * agricoltura e foreste;
- * artigianato;
- * altre materie indicate da leggi costituzionali.

Le leggi della Repubblica possono demandare alla Regione il potere di emanare norme per la loro attuazione.

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14.09.1946	Vol. VII	pp. 1007-1017	S2
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22.04.1947 pm	Vol. II	pp. 1117-1153	CA
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31.05.1947	Vol. III	pp. 2089-2101	CA
03.06.1947	Vol. III	pp. 2103-2136	CA
04.06.1947 am	Vol. III	pp. 2137-2152	CA
04.06.1947 pm	Vol. III	pp. 2153-2177	CA
06.06.1947 am	Vol. III	pp. 2179-2201	CA
06.06.1947 pm	Vol. III	pp. 2203-2238	CA
07.06.1947	Vol. III	pp. 2239-2268	CA
10.06.1947 am	Vol. III	pp. 2277-2290	CA
12.06.1947 am	Vol. III	pp. 2297-2316	CA
13.06.1947 am	Vol. III	pp. 2321-2344	CA
27.06.1947	Vol. III	pp. 2393-2434	CA
01.07.1947 pm	Vol. III	pp. 2443-2468	CA
02.07.1947 pm	Vol. III	pp. 2471-2485	CA
03.07.1947	Vol. III	pp. 2487-2495	CA
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09.07.1947 pm	Vol. III	pp. 2553-2571	CA
10.07.1947 pm	Vol. III	pp. 2575-2591	CA
11.07.1947 pm	Vol. III	pp. 2595-2620	CA
16.07.1947 pm	Vol. III	pp. 2665-2680	CA
05.12.1947 pm	Vol. V	pp. 4417-4452	CA

Art. 118. (112)

Spettano alla Regione le funzioni amministrative per le materie elencate nel precedente articolo, salvo quelle di interesse esclusivamente locale, che possono essere attribuite dalle leggi della Repubblica alle Provincie, ai Comuni o ad altri enti locali. Lo Stato può con legge delegare alla Regione l'esercizio di altre funzioni amministrative.

La Regione esercita normalmente le sue funzioni amministrative delegandole alle Provincie, ai Comuni o ad altri enti locali, o valendosi dei loro uffici.

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29.05.1947	Vol. III	pp. 2019-2057	CA
03.06.1947	Vol. III	pp. 2103-2136	CA
03.07.1947	Vol. III	pp. 2487-2495	CA
04.07.1947 pm	Vol. III	pp. 2499-2524	CA
08.07.1947	Vol. III	pp. 2529-2550	CA
09.07.1947 pm	Vol. III	pp. 2553-2571	CA
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16.07.1947 pm	Vol. III	pp. 2665-2680	CA
17.07.1947 pm	Vol. III	pp. 2685-2712	CA
04.12.1947 pm	Vol. V	pp. 4367-4399	CA

Art. 119. (113)

Le Regioni hanno autonomia finanziaria nelle forme e nei limiti stabiliti da leggi della Repubblica, che la coordinano con la finanza dello Stato delle Provincie e dei Comuni.

Alle Regioni sono attribuiti tributi propri e quote di tributi erariali, in relazione ai bisogni delle Regioni per le spese necessarie ad adempiere le loro funzioni normali. Per provvedere a scopi determinati, e particolarmente per valorizzare il Mezzogiorno e le Isole, lo Stato assegna per legge a singole Regioni contributi speciali.

La Regione ha un proprio demanio e patrimonio, secondo le modalità stabilite con legge della Repubblica.

Debates:

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29.07.1946	Vol. VII	pp. 833-852	S2
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31.07.1946	Vol. VII	pp. 867-882	S2

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17.01.1947	Vol. VI	pp. 117-130	AP
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06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
27.05.1947	Vol. III	pp. 1949-1983	CA
28.05.1947	Vol. III	pp. 1985-2018	CA
29.05.1947	Vol. III	pp. 2019-2057	CA
03.06.1947	Vol. III	pp. 2103-2136	CA
06.06.1947 pm	Vol. III	pp. 2203-2238	CA
27.06.1947	Vol. III	pp. 2393-2434	CA
04.07.1947 pm	Vol. III	pp. 2499-2524	CA
11.07.1947 pm	Vol. III	pp. 2595-2620	CA
15.07.1947 pm	Vol. III	pp. 2627-2661	CA

Art. 120. (113)

La Regione non può istituire dazi d'importazione o esportazione o transito fra le Regioni.

Non può adottare provvedimenti che ostacolino in qualsiasi modo la libera circolazione delle persone e delle cose fra le Regioni.

Non può limitare il diritto dei cittadini di esercitare in qualunque parte del territorio nazionale la loro professione, impiego o lavoro.

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31.07.1946	Vol. VII	pp. 867-882	S2
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14.09.1946	Vol. VII	pp. 1007-1017	S2
18.12.1946	Vol. VII	pp. 1299-1595	S2
17.01.1947	Vol. VI	pp. 117-130	AP
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04.06.1947 pm	Vol. III	pp. 2153-2177	CA
10.06.1947 am	Vol. III	pp. 2277-2290	CA
27.06.1947	Vol. III	pp. 2393-2434	CA
15.07.1947 pm	Vol. III	pp. 2627-2661	CA

Art. 121. (114, 115, 116)

Sono organi della Regione: il Consiglio regionale, la Giunta e il suo Presidente.

Il Consiglio regionale esercita le potestà legislative e regolamentari attribuite alla Regione e le altre funzioni conferitegli dalla Costituzione e dalle leggi. Può fare proposte di legge alle Camere.

La Giunta regionale è l'organo esecutivo delle Regioni.

Il Presidente della Giunta rappresenta la Regione: promulga le leggi ed i regolamenti regionali; dirige le funzioni amministrative delegate dallo Stato alla Regione, conformandosi alle istruzioni del Governo centrale.

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04.06.1947 am	Vol. III	pp. 2137-2152	CA
04.06.1947 pm	Vol. III	pp. 2153-2177	CA
10.06.1947 am	Vol. III	pp. 2277-2290	CA
16.07.1947 pm	Vol. III	pp. 2665-2680	CA
17.07.1947 pm	Vol. III	pp. 2685-2712	CA

Art. 122.

Il sistema d'elezione, il numero e i casi di ineleggibilità e di incompatibilità dei consiglieri regionali sono stabiliti con legge della Repubblica.

Nessuno può appartenere contemporaneamente a un Consiglio regionale e ad una delle Camere del Parlamento o ad un altro Consiglio regionale.

Il Consiglio elegge nel suo seno un presidente e un ufficio di presidenza per i propri lavori.

I consiglieri regionali non possono essere chiamati a rispondere delle opinioni espresse e dei voti dati nell'esercizio delle loro funzioni.

Il Presidente ed i membri della Giunta sono eletti dal Consiglio regionale tra i suoi componenti.

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31.07.1946	Vol. VII	pp. 867-882	S2
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14.09.1946	Vol. VII	pp. 1007-1017	S2
18.12.1946	Vol. VII	pp. 1299-1595	S2
17.01.1947	Vol. VI	pp. 117-130	AP
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06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA

Art. 123.

Ogni Regione ha uno statuto il quale, in armonia con la Costituzione e con le leggi della Repubblica, stabilisce le norme relative all'organizzazione interna della Regione. Lo Statuto regola l'esercizio del diritto di iniziativa e del referendum su leggi e provvedimenti amministrativi della Regione e la pubblicazione delle leggi e dei regolamenti regionali.

Lo Statuto è deliberato dal Consiglio regionale a maggioranza assoluta dei suoi componenti, ed è approvato con legge della Repubblica.

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17.01.1947	Vol. VI	pp. 117-130	AP
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06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
06.06.1947 am	Vol. III	pp. 2179-2201	CA
27.06.1947	Vol. III	pp. 2393-2434	CA
08.07.1947	Vol. III	pp. 2529-2550	CA
17.07.1947 pm	Vol. III	pp. 2685-2712	CA
22.07.1947 am	Vol. III	pp. 2721-2727	CA
23.07.1947 am	Vol. III	pp. 2731-2732	CA
04.12.1947 pm	Vol. V	pp. 4367-4399	CA
22.12.1947 am	Vol. V	pp. 4579-4595	CA

Art. 124.

Un commissario del Governo, residente nel capoluogo della Regione, soprintende alle funzioni amministrative esercitate dallo Stato e le coordina con quelle esercitate dalla Regione.

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01.08.1946	Vol. VII	pp. 883-894	S2
14.09.1946	Vol. VII	pp. 1007-1017	S2
18.12.1946	Vol. VII	pp. 1299-1595	S2
17.01.1947	Vol. VI	pp. 117-130	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA

Art. 125.

Il controllo di legittimità sugli atti amministrativi della Regione è esercitato, in forma decentrata, da un organo dello Stato, nei modi e nei limiti stabiliti da leggi della Repubblica. La legge può in determinati casi ammettere il controllo di merito, al solo effetto di promuovere, con richiesta motivata, il riesame della deliberazione da parte del Consiglio regionale.

Nella Regione sono istituiti organi di giustizia amministrativa di primo grado, secondo l'ordinamento stabilito da legge della Repubblica. Possono istituirsi sezioni con sede diversa dal capoluogo della Regione.

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31.07.1946	Vol. VII	pp. 867-882	S2
01.08.1946	Vol. VII	pp. 883-894	S2
14.09.1946	Vol. VII	pp. 1007-1017	S2
18.12.1946	Vol. VII	pp. 1299-1595	S2
21.12.1946	Vol. VII	pp. 1621-1630	S2
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01.02.1947	Vol. VI	pp. 279-280	AP
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04.06.1947 am	Vol. III	pp. 2137-2152	CA
07.06.1947	Vol. III	pp. 2239-2268	CA
10.06.1947 am	Vol. III	pp. 2277-2290	CA
27.06.1947	Vol. III	pp. 2393-2434	CA
17.07.1947 pm	Vol. III	pp. 2685-2712	CA
22.07.1947 am	Vol. III	pp. 2721-2727	CA
04.12.1947 am	Vol. V	pp. 4347-4365	CA
04.12.1947 pm	Vol. V	pp. 4367-4399	CA

Art. 126. (117)

Il Consiglio regionale può essere sciolto quando compia atti contrari alla Costituzione o gravi violazioni di legge, o non corrisponda all'invito del Governo di sostituire la Giunta o il Presidente, che abbiano compiuto analoghi atti o violazioni. Può essere sciolto quando, per dimissioni o per impossibilità di formare una maggioranza, non sia in grado di funzionare. Può essere altresì sciolto per ragioni di sicurezza nazionale.

Lo scioglimento è disposto con decreto motivato del Presidente della Repubblica, sentita una Commissione di deputati e senatori costituita, per le questioni regionali, nei modi stabiliti con legge della Repubblica.

Col decreto di scioglimento è nominata una Commissione di tre cittadini eleggibili al Consiglio regionale, che indice le elezioni entro tre mesi e provvede all'ordinaria amministrazione di competenza della Giunta e agli atti improrogabili, da sottoporre alla ratifica del nuovo Consiglio.

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31.07.1946	Vol. VII	pp. 867-882	S2
01.08.1946	Vol. VII	pp. 883-894	S2
14.09.1946	Vol. VII	pp. 1007-1017	S2
18.12.1946	Vol. VII	pp. 1299-1595	S2
17.01.1947	Vol. VI	pp. 117-130	AP
01.02.1947	Vol. VI	p. 276	AP
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04.03.1947	Vol. I	pp. 135-166	CA
05.03.1947	Vol. I	pp. 167-200	CA
04.06.1947 pm	Vol. III	pp. 2153-2177	CA
06.06.1947 am	Vol. III	pp. 2179-2201	CA
07.06.1947	Vol. III	pp. 2239-2268	CA
17.07.1947 pm	Vol. III	pp. 2685-2712	CA
11.11.1947 pm	Vol. V	pp. 3757-3788	CA
04.12.1947 am	Vol. V	pp. 4347-4365	CA

Art. 127. (118)

Ogni legge approvata dal Consiglio regionale è comunicata al Commissario che, salvo il caso di opposizione da parte del Governo, deve vistarla nel termine di trenta giorni dalla comunicazione.

La legge è promulgata nei dieci giorni dall'apposizione del visto ed entra in vigore non prima di quindici giorni dalla sua pubblicazione. Se una legge è dichiarata urgente dal Consiglio regionale, e il Governo della Repubblica lo consente, la promulgazione e l'entrata in vigore non sono subordinate ai termini indicati.

Il Governo della Repubblica, quando ritenga che una legge approvata dal Consiglio regionale ecceda la competenza della Regione o contrasti con gli interessi nazionali o con quelli di altre Regioni, la rinvia al Consiglio regionale nel termine fissato per l'apposizione del visto.

Ove il Consiglio regionale la approvi di nuovo a maggioranza assoluta dei suoi componenti, il Governo della Repubblica può, nei quindici giorni dalla comunicazione, promuovere la questione di legittimità davanti alla Corte Costituzionale, o quella di merito per contrasto di interessi davanti alle Camere. In caso di dubbio, la Corte decide di chi sia la competenza.

Debates:

26.07.1946	Vol. VII	pp. 815-818	S2
27.07.1946	Vol. VII	pp. 819-832	S2
29.07.1946	Vol. VII	pp. 833-852	S2
30.07.1946	Vol. VII	pp. 853-866	S2
31.07.1946	Vol. VII	pp. 867-882	S2
01.08.1946	Vol. VII	pp. 883-894	S2
14.09.1946	Vol. VII	pp. 1007-1017	S2
18.12.1946	Vol. VII	pp. 1299-1595	S2
17.01.1947	Vol. VI	pp. 117-130	AP

01.02.1947	Vol. VI	p. 276	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
05.03.1947	Vol. I	pp. 167-200	CA
04.06.1947 pm	Vol. III	pp. 2153-2177	CA
06.06.1947 am	Vol. III	pp. 2179-2201	CA
07.06.1947	Vol. III	pp. 2239-2268	CA
10.06.1947 am	Vol. III	pp. 2277-2290	CA
02.07.1947 pm	Vol. III	pp. 2471-2485	CA
03.07.1947	Vol. III	pp. 2487-2495	CA
11.07.1947 pm	Vol. III	pp. 2595-2620	CA
17.07.1947 pm	Vol. III	pp. 2685-2712	CA
23.07.1947 am	Vol. III	pp. 2731-2732	CA
18.10.1947	Vol. IV	pp. 3367-3383	CA
04.12.1947 am	Vol. V	pp. 4347-4365	CA

Art. 128. (121)

Le Provincie e i Comuni sono enti autonomi nell'ambito dei principi fissati da leggi generali della Repubblica, che ne determinano le funzioni.

Debates:

26.07.1946	Vol. VII	pp. 815-818	S2
27.07.1946	Vol. VII	pp. 819-832	S2
29.07.1946	Vol. VII	pp. 833-852	S2
30.07.1946	Vol. VII	pp. 853-866	S2
31.07.1946	Vol. VII	pp. 867-882	S2
01.08.1946	Vol. VII	pp. 883-894	S2
14.09.1946	Vol. VII	pp. 1007-1017	S2
18.12.1946	Vol. VII	pp. 1299-1595	S2
17.01.1947	Vol. VI	pp. 117-130	AP
31.01.1947	Vol. VI	pp. 267-272	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
06.06.1947 am	Vol. III	pp. 2179-2201	CA
27.06.1947	Vol. III	pp. 2393-2434	CA
11.07.1947 pm	Vol. III	pp. 2595-2620	CA
17.07.1947 pm	Vol. III	pp. 2685-2712	CA
22.07.1947 am	Vol. III	pp. 2721-2727	CA
04.12.1947 pm	Vol. V	pp. 4367-4399	CA

Art. 129. (107, 120)

Le Provincie e i Comuni sono anche circoscrizioni di decentramento statale e regionale.

Le circoscrizioni provinciali possono essere suddivise in circondari con funzioni esclusivamente amministrative per un ulteriore decentramento.

Debates:

26.07.1946	Vol. VII	pp. 815-818	S2
27.07.1946	Vol. VII	pp. 819-832	S2

29.07.1946	Vol. VII	pp. 833-852	S2
30.07.1946	Vol. VII	pp. 853-866	S2
31.07.1946	Vol. VII	pp. 867-882	S2
01.08.1946	Vol. VII	pp. 883-894	S2
14.09.1946	Vol. VII	pp. 1007-1017	S2
18.12.1946	Vol. VII	pp. 1299-1595	S2
17.01.1947	Vol. VI	pp. 117-130	AP
31.01.1947	Vol. VI	pp. 267-272	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
30.05.1947	Vol. III	pp. 2059-2088	CA
03.06.1947	Vol. III	pp. 2103-2136	CA
04.06.1947 am	Vol. III	pp. 2137-2152	CA
06.06.1947 pm	Vol. III	pp. 2203-2238	CA
10.06.1947 am	Vol. III	pp. 2277-2290	CA
27.06.1947	Vol. III	pp. 2393-2434	CA
11.07.1947 pm	Vol. III	pp. 2595-2620	CA
17.07.1947 pm	Vol. III	pp. 2685-2712	CA

Art. 130. (122)

Un organo della Regione, costituito nei modi stabiliti da legge della Repubblica, esercita, anche in forma decentrata, il controllo di legittimità sugli atti delle Provincie, dei Comuni e degli altri enti locali. In casi determinati dalla legge può essere esercitato il controllo di merito, nella forma di richiesta motivata, agli enti deliberanti, di riesaminare la loro deliberazione.

Debates:

26.07.1946	Vol. VII	pp. 815-818	S2
27.07.1946	Vol. VII	pp. 819-832	S2
29.07.1946	Vol. VII	pp. 833-852	S2
30.07.1946	Vol. VII	pp. 853-866	S2
31.07.1946	Vol. VII	pp. 867-882	S2
01.08.1946	Vol. VII	pp. 883-894	S2
14.09.1946	Vol. VII	pp. 1007-1017	S2
18.12.1946	Vol. VII	pp. 1299-1595	S2
17.01.1947	Vol. VI	pp. 117-130	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
28.05.1947	Vol. III	pp. 1985-2018	CA
30.05.1947	Vol. III	pp. 2059-2088	CA
04.06.1947 am	Vol. III	pp. 2137-2152	CA
07.06.1947	Vol. III	pp. 2239-2268	CA
10.06.1947 am	Vol. III	pp. 2277-2290	CA
27.06.1947	Vol. III	pp. 2393-2434	CA
17.07.1947 pm	Vol. III	pp. 2685-2712	CA
22.07.1947 am	Vol. III	pp. 2721-2727	CA

Art. 131. (123)

Sono costituite le seguenti Regioni:

- * Piemonte;
- * Valle d'Aosta;
- * Lombardia;
- * Trentino-Alto Adige;
- * Veneto;
- * Friuli-Venezia Giulia;
- * Liguria;
- * Emilia-Romagna;
- * Toscana;
- * Umbria;
- * Marche;
- * Lazio;
- * Abruzzi e Molise;
- * Campania;
- * Puglia;
- * Basilicata;
- * Calabria;
- * Sicilia;
- * Sardegna.

Debates:

26.07.1946	Vol. VII	pp. 815-818	S2
27.07.1946	Vol. VII	pp. 819-832	S2
29.07.1946	Vol. VII	pp. 833-852	S2
30.07.1946	Vol. VII	pp. 853-866	S2
31.07.1946	Vol. VII	pp. 867-882	S2
01.08.1946	Vol. VII	pp. 883-894	S2
14.09.1946	Vol. VII	pp. 1007-1017	S2
05.11.1946	Vol. VII	pp. 1262-1263	S2
18.12.1946	Vol. VII	pp. 1299-1595	S2
17.01.1947	Vol. VI	pp. 117-130	AP
01.02.1947	Vol. VI	pp. 280-285	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
27.05.1947	Vol. III	pp. 1949-1983	CA
29.05.1947	Vol. III	pp. 2019-2057	CA
30.05.1947	Vol. III	pp. 2059-2088	CA
04.06.1947 am	Vol. III	pp. 2137-2152	CA
06.06.1947 am	Vol. III	pp. 2179-2201	CA
06.06.1947 pm	Vol. III	pp. 2203-2238	CA
27.06.1947	Vol. III	pp. 2393-2434	CA
01.07.1947 pm	Vol. III	pp. 2443-2468	CA
17.07.1947 pm	Vol. III	pp. 2685-2712	CA
22.07.1947 am	Vol. III	pp. 2721-2727	CA
29.10.1947 pm	Vol. IV	pp. 3591-3634	CA
30.10.1947 am	Vol. IV	pp. 3635-3647	CA
04.12.1947 pm	Vol. V	pp. 4367-4399	CA
06.12.1947	Vol. V	pp. 4453-4472	CA

Art. 132. (119, 125)

Si può con legge costituzionale, sentiti i Consigli regionali, disporre la fusione di Regioni esistenti o la creazione di nuove Regioni con un minimo di un milione d'abitanti, quando ne facciano richiesta tanti Consigli comunali che rappresentino almeno un terzo delle popolazioni interessate, e la proposta sia approvata con referendum dalla maggioranza delle popolazioni stesse.

Si può, con referendum e con legge della Repubblica, sentiti i Consigli regionali, consentire che Provincie e Comuni, che ne facciano richiesta, siano staccati da una Regione ed aggregati ad un'altra.

Debates:

26.07.1946	Vol. VII	pp. 815-818	S2
27.07.1946	Vol. VII	pp. 819-832	S2
29.07.1946	Vol. VII	pp. 833-852	S2
30.07.1946	Vol. VII	pp. 853-866	S2
31.07.1946	Vol. VII	pp. 867-882	S2
01.08.1946	Vol. VII	pp. 883-894	S2
14.09.1946	Vol. VII	pp. 1007-1017	S2
18.12.1946	Vol. VII	pp. 1299-1595	S2
17.01.1947	Vol. VI	pp. 117-130	AP
01.02.1947	Vol. VI	p. 283	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
06.06.1947 am	Vol. III	pp. 2179-2201	CA
06.06.1947 pm	Vol. III	pp. 2203-2238	CA
27.06.1947	Vol. III	pp. 2393-2434	CA
08.07.1947	Vol. III	pp. 2529-2550	CA
17.07.1947 pm	Vol. III	pp. 2685-2712	CA
22.07.1947 am	Vol. III	pp. 2721-2727	CA
29.10.1947 pm	Vol. IV	pp. 3591-3634	CA
04.12.1947 pm	Vol. V	pp. 4367-4399	CA

Art. 133.

Il mutamento delle circoscrizioni provinciali e la istituzione di nuove Provincie nell'ambito d'una Regione sono stabiliti con leggi della Repubblica, su iniziative dei Comuni, sentita la stessa Regione.

La Regione, sentite le popolazioni interessate, può con sue leggi istituire nel proprio territorio nuovi Comuni e modificare le loro circoscrizioni e denominazioni.

Debates:

26.07.1946	Vol. VII	pp. 815-818	S2
27.07.1946	Vol. VII	pp. 819-832	S2
29.07.1946	Vol. VII	pp. 833-852	S2
30.07.1946	Vol. VII	pp. 853-866	S2
31.07.1946	Vol. VII	pp. 867-882	S2
01.08.1946	Vol. VII	pp. 883-894	S2
14.09.1946	Vol. VII	pp. 1007-1017	S2
18.12.1946	Vol. VII	pp. 1299-1595	S2
17.01.1947	Vol. VI	pp. 117-130	AP

TITOLO VI**Garanzie Costituzionali****Discussioni Generali**

23.05.1947

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pp. 1915-1947

CA

Sezione I - La Corte Costituzionale**Art. 134. (126)**

La Corte Costituzionale giudica:

sulle controversie relative alla legittimità costituzionale delle leggi e degli atti, aventi forza di legge, dello Stato e delle Regioni;

sui conflitti di attribuzione tra i poteri dello Stato e su quelli tra lo Stato e le Regioni, e tra le Regioni;

sulle accuse promosse contro il Presidente della Repubblica ed i Ministri, a norma della Costituzione.

Debates:

13.12.1946	Vol. VIII	pp. 1913-1920	S2ii
11.01.1947	Vol. VIII	pp. 1837-1842	S2i
14.01.1947	Vol. VIII	pp. 2023-2028	S2ii
15.01.1947	Vol. VIII	pp. 2029-2039	S2ii
23.01.1947	Vol. VIII	pp. 2051-2058	S2ii
24.01.1947	Vol. VIII	pp. 2059-2065	S2ii
01.02.1947	Vol. VI	pp. 289-294	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
05.03.1947	Vol. I	pp. 167-200	CA
07.03.1947	Vol. I	pp. 233-257	CA
12.03.1947	Vol. I	pp. 341-358	CA
23.05.1947	Vol. III	pp. 1915-1947	CA
10.09.1947	Vol. IV	pp. 2767-2778	CA
11.11.1947 pm	Vol. V	pp. 3757-3788	CA
12.11.1947 pm	Vol. V	pp. 3805-3832	CA
27.11.1947 pm	Vol. V	pp. 4157-4199	CA
28.11.1947 am	Vol. V	pp. 4201-4219	CA
28.11.1947 pm	Vol. V	pp. 4221-4251	CA
03.12.1947 am	Vol. V	pp. 4305-4317	CA
03.12.1947 pm	Vol. V	pp. 4319-4346	CA
05.12.1947 pm	Vol. V	pp. 4417-4452	CA

Art. 135. (127)

La Corte Costituzionale è composta di quindici giudici nominati per un terzo dal Presidente della Repubblica, per un terzo dal Parlamento in seduta comune e per un terzo dalle supreme magistrature ordinaria ed amministrative.

I giudici della Corte Costituzionale sono scelti tra i magistrati anche a riposo delle giurisdizioni superiori ordinaria ed amministrative, i professori ordinari di università in materie giuridiche e gli avvocati dopo venti anni d'esercizio.

La Corte elegge il presidente fra i suoi componenti. I giudici sono nominati per dodici anni, si rinnovano parzialmente secondo le norme stabilite dalla legge e non sono immediatamente rieleggibili.

L'ufficio di giudice della Corte è incompatibile con quello di membro del Parlamento o d'un Consiglio regionale, con l'esercizio della professione d'avvocato, e con ogni carica ed ufficio indicati dalla legge.

Nei giudizi d'accusa contro il Presidente della Repubblica e contro i Ministri intervengono, oltre i giudici ordinari della Corte, sedici membri eletti, all'inizio di ogni legislatura, dal Parlamento in seduta comune tra cittadini aventi i requisiti per l'eleggibilità a senatore.

Debates:

20.12.1946	Vol. VIII	pp. 1961-1966	S2ii
08.01.1947	Vol. VIII	pp. 1967-1974	S2ii
14.01.1947	Vol. VIII	pp. 2023-2028	S2ii
15.01.1947	Vol. VIII	pp. 2029-2039	S2ii
21.01.1947	Vol. VIII	pp. 2041-2044	S2ii
23.01.1947	Vol. VIII	pp. 2051-2058	S2ii
24.01.1947	Vol. VIII	pp. 2059-2065	S2ii
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
07.03.1947	Vol. I	pp. 233-257	CA
12.03.1947	Vol. I	pp. 341-358	CA
18.10.1947	Vol. IV	pp. 3367-3383	CA
07.11.1947 am	Vol. V	pp. 3681-3692	CA
07.11.1947 pm	Vol. V	pp. 3693-3716	CA
11.11.1947 pm	Vol. V	pp. 3757-3788	CA
28.11.1947 am	Vol. V	pp. 4201-4219	CA
28.11.1947 pm	Vol. V	pp. 4221-4251	CA
29.11.1947 am	Vol. V	pp. 4253-4257	CA
29.11.1947 pm	Vol. V	pp. 4259-4273	CA
02.12.1947	Vol. V	pp. 4277-4303	CA
05.12.1947 pm	Vol. V	pp. 4417-4452	CA

Art. 136. (128)

Quando la Corte dichiara l'illegittimità costituzionale di una norma di legge o di atto avente forza di legge, la norma cessa di avere efficacia dal giorno successivo alla pubblicazione della decisione.

La decisione della Corte è pubblicata e comunicata alle Camere ed ai Consigli regionali interessati, affinché, ove lo ritengano necessario, provvedano nelle forme costituzionali.

Debates:

13.12.1946	Vol. VIII	pp. 1913-1920	S2ii
14.01.1947	Vol. VIII	pp. 2023-2028	S2ii
15.01.1947	Vol. VIII	pp. 2029-2039	S2ii
22.01.1947	Vol. VIII	pp. 2045-2049	S2ii
23.01.1947	Vol. VIII	pp. 2051-2058	S2ii
24.01.1947	Vol. VIII	pp. 2059-2065	S2ii
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA

12.03.1947	Vol. I	pp. 341-358	CA
11.11.1947 pm	Vol. V	pp. 3757-3788	CA
28.11.1947 am	Vol. V	pp. 4201-4219	CA
28.11.1947 pm	Vol. V	pp. 4221-4251	CA
29.11.1947 pm	Vol. V	pp. 4259-4273	CA
02.12.1947	Vol. V	pp. 4277-4303	CA
03.12.1947 am	Vol. V	pp. 4305-4317	CA
05.12.1947 pm	Vol. V	pp. 4417-4452	CA

Art. 137. (129)

Una legge costituzionale stabilisce le condizioni, le forme, i termini di proponibilità dei giudizi di legittimità costituzionale, e le garanzie d'indipendenza dei giudici della Corte.

Con legge ordinaria sono stabilite le altre norme necessarie per la costituzione e il funzionamento della Corte.

Contro le decisioni della Corte Costituzionale non è ammessa alcuna impugnazione.

Debates:

14.01.1947	Vol. VIII	pp. 2023-2028	S2ii
15.01.1947	Vol. VIII	pp. 2029-2039	S2ii
22.01.1947	Vol. VIII	pp. 2045-2049	S2ii
23.01.1947	Vol. VIII	pp. 2051-2058	S2ii
24.01.1947	Vol. VIII	pp. 2059-2065	S2ii
01.02.1947	Vol. VI	p. 294	AP
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
12.03.1947	Vol. I	pp. 341-358	CA
11.11.1947 pm	Vol. V	pp. 3757-3788	CA
29.11.1947 pm	Vol. V	pp. 4259-4273	CA
03.12.1947 am	Vol. V	pp. 4305-4317	CA
22.12.1947 am	Vol. V	pp. 4579-4595	CA

Sezione II - Revisione della Costituzione. Leggi costituzionali.

Art. 138. (130)

Le leggi di revisione della Costituzione e le altre leggi costituzionali sono adottate da ciascuna Camera con due successive deliberazioni ad intervallo non minore di tre mesi, e sono approvate a maggioranza assoluta dei componenti di ciascuna Camera nella seconda votazione.

Le leggi stesse sono sottoposte a referendum popolare quando, entro tre mesi dalla loro pubblicazione, ne facciano domanda un quinto dei membri di una Camera o cinquecentomila elettori o cinque Consigli regionali. La legge sottoposta a referendum non è promulgata, se non è approvata dalla maggioranza dei voti validi. Non si fa luogo a referendum se la legge è stata approvata nella seconda votazione da ciascuna delle Camere a maggioranza di due terzi dei suoi componenti.

Debates:

11.01.1947	Vol. VIII	pp. 1837-1842	S2i
14.01.1947	Vol. VIII	pp. 2023-2028	S2ii
15.01.1947	Vol. VIII	pp. 1871-1879	S2i
16.01.1947	Vol. VIII	pp. 1881-1885	S2i
24.01.1947	Vol. VIII	pp. 2059-2065	S2ii
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
20.03.1947	Vol. I	pp. 503-536	CA
11.11.1947 pm	Vol. V	pp. 3757-3788	CA
28.11.1947 pm	Vol. V	pp. 4221-4251	CA
03.12.1947 am	Vol. V	pp. 4305-4317	CA
03.12.1947 pm	Vol. V	pp. 4319-4346	CA

Art. 139. (131)

La forma repubblicana non può essere oggetto di revisione costituzionale.

Debates:

02.10.1946	Vol. VI	pp. 478-480	S1
28.11.1946	Vol. VI	pp. 727-736	S1
29.11.1946	Vol. VI	pp. 737-746	S1
19.12.1946	Vol. VI	pp. 807-814	S1
11.01.1947	Vol. VIII	pp. 1837-1842	S2i
06.02.1947	Vol. I	pp. lxxv-lxxxviii	CA
04.03.1947	Vol. I	pp. 135-166	CA
06.03.1947	Vol. I	pp. 203-230	CA
08.03.1947	Vol. I	pp. 259-285	CA
18.03.1947 pm	Vol. I	pp. 479-502	CA
14.10.1947 am	Vol. IV	pp. 3225-3238	CA
03.12.1947 pm	Vol. V	pp. 4319-4346	CA

Disposizioni Transitorie e Finali**I.**

Con l'entrata in vigore della Costituzione il Capo provvisorio dello Stato esercita le attribuzioni di Presidente della Repubblica e ne assume il titolo.

Debates:

05.12.1947 pm	Vol. V	pp. 4417-4452	CA
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II. (V)

Se alla data della elezione del Presidente della Repubblica non sono costituiti tutti i Consigli regionali, partecipano alla elezione soltanto i componenti delle due Camere.

Debates:

06.12.1947	Vol. V	pp. 4453-4472	CA
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III. (V)

Per la prima composizione del Senato della Repubblica sono nominati senatori, con decreto del Presidente della Repubblica, i deputati dell'Assemblea Costituente che posseggono i requisiti di legge per essere senatori e che:

sono stati presidenti del Consiglio dei ministri o di Assemblee legislative; hanno fatto parte del disciolto Senato; hanno avuto almeno tre elezioni, compresa quella all'Assemblea Costituente; sono stati dichiarati decaduti nella seduta della Camera dei deputati del 9 novembre 1926; hanno scontato la pena della reclusione non inferiore a cinque anni in seguito a condanna del tribunale speciale fascista per la difesa dello Stato.

Sono nominati altresì senatori, con decreto del Presidente della Repubblica, i membri del disciolto Senato che hanno fatto parte della Consulta Nazionale.

Al diritto di essere nominati senatori si può rinunciare prima della firma del decreto di nomina. L'accettazione della candidatura alle elezioni politiche implica rinuncia al diritto di nomina a senatore.

Debates:

19.10.1946	Vol. VII	pp. 1211-1218	S2
25.09.1947 pm	Vol. IV	pp. 3029-3053	CA
08.10.1947 pm	Vol. IV	pp. 3115-3143	CA
09.10.1947 pm	Vol. IV	pp. 3157-3186	CA
06.12.1947	Vol. V	pp. 4453-4472	CA
12.12.1947 am	Vol. V	pp. 4485-4496	CA
12.12.1947 pm	Vol. V	pp. 4497-4508	CA
13.12.1947 pm	Vol. V	pp. 4511-4522	CA
16.12.1947 pm	Vol. V	pp. 4527-4529	CA IV.

Per la prima elezione del Senato il Molise è considerato come Regione a se stante, con il numero dei senatori che gli compete in base alla sua popolazione.

Debates:

06.12.1947	Vol. V	pp. 4453-4472	CA
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V.

La disposizione dell'art. 80 della Costituzione, per quanto concerne i trattati internazionali che importano oneri alle finanze o modificazioni di legge, ha effetto dalla data di convocazione delle Camere.

Debates:

20.12.1947 am	Vol. V	pp. 4543-4558	CA
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VI. (VII)

Entro cinque anni dall'entrata in vigore della Costituzione si procede alla revisione degli organi speciali di giurisdizione attualmente esistenti, salvo le giurisdizioni del Consiglio di Stato, della Corte dei Conti e dei tribunali militari.

Entro un anno dalla stessa data si provvede con legge al riordinamento del tribunale supremo militare in relazione all'art. III.

Debates:

09.01.1947	Vol. VIII	pp. 1983-1990	S2ii
10.01.1947	Vol. VIII	pp. 2005-2012	S2ii
11.01.1947	Vol. VIII	pp. 2013-2016	S2ii
07.11.1947 pm	Vol. V	pp. 3693-3716	CA
08.11.1947	Vol. V	pp. 3717-3739	CA
13.11.1947 am	Vol. V	pp. 3833-3853	CA
21.11.1947 pm	Vol. V	pp. 3967-3994	CA
05.12.1947 pm	Vol. V	pp. 4417-4452	CA

VII.

Fino a quando non sia emanata la nuova legge sull'ordinamento giudiziario in conformità con la Costituzione, continuano ad osservarsi le norme dell'ordinamento vigente.

Fino a quando non entri in funzione la Corte Costituzionale, la decisione delle controversie indicate nell'articolo 134 ha luogo nelle forme e nei limiti delle norme preesistenti all'entrata in vigore della Costituzione.

I giudici della Corte Costituzionale nominati nella prima composizione della Corte stessa non sono soggetti alla parziale rinnovazione e durano in carica dodici anni.

Debates:

05.12.1947 pm	Vol. V	pp. 4417-4452	CA
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VIII. (VIII)

Le elezioni dei Consigli regionali e degli organi elettivi delle amministrazioni provinciali sono indette entro un anno dall'entrata in vigore della Costituzione. Leggi della Repubblica regolano per ogni ramo della pubblica amministrazione il passaggio delle funzioni statali attribuite alle Regioni. Fino a quando non sia provveduto al riordinamento e alla distribuzione delle funzioni amministrative fra gli enti locali restano alle Provincie ed ai Comuni le funzioni che esercitano attualmente e le altre di cui le Regioni delegano loro l'esercizio.

Leggi della Repubblica regolano il passaggio alle Regioni di funzionari e dipendenti dello Stato, anche delle amministrazioni centrali, che sia reso necessario dal nuovo ordinamento. Per la formazione dei loro uffici le Regioni devono, tranne che in casi di necessità, trarre il proprio personale da quello dello Stato e degli enti locali.

Debates:

01.02.1947	Vol. VI	pp. 286-287	AP
11.07.1947 pm	Vol. III	pp. 2595-2620	CA
05.12.1947 pm	Vol. V	pp. 4417-4452	CA

IX.

La Repubblica, entro tre anni dall'entrata in vigore della Costituzione, adegua le sue leggi alle esigenze delle autonomie locali e alla competenza legislativa attribuita alle Regioni.

Debates:

05.12.1947 pm Vol. V pp. 4417-4452 CA

X.

Alla Regione del Friuli-Venezia Giulia, di cui all'articolo 116, si applicano provvisoriamente le norme generali del Titolo V della parte seconda, ferma restando la tutela delle minoranze linguistiche in conformità con l'articolo 6.

Debates:

(See articles 6 and 116 debates)

XI.

Fino a cinque anni dall'entrata in vigore della Costituzione si possono, con leggi costituzionali, formare altre Regioni, a modificazione dell'elenco di cui all'articolo 131, anche senza il concorso delle condizioni richieste dal primo comma dell'articolo 132, fermo rimanendo tuttavia l'obbligo di sentire le popolazioni interessate.

Debates:

05.12.1947 pm Vol. V pp. 4417-4452 CA

XII. (I)

È vietata la riorganizzazione, sotto qualsiasi forma, del disciolto partito fascista. In deroga all'articolo 48, sono stabilite con legge, per non oltre un quinquennio dalla entrata in vigore della Costituzione, limitazioni temporanee al diritto di voto e alla eleggibilità per i capi responsabili del regime fascista.

Debates:

19.11.1946	Vol. VI	pp. 699-707	S1
08.03.1947	Vol. I	pp. 259-285	CA
29.10.1947 am	Vol. IV	pp. 3581-3590	CA
29.10.1947 pm	Vol. IV	pp. 3591-3634	CA
05.12.1947 pm	Vol. V	pp. 4417-4452	CA

XIII. (II, III)

I membri e i discendenti di Casa Savoia non sono elettori e non possono ricoprire uffici pubblici né cariche elettive.

Agli ex re di Casa Savoia, alle loro consorti e ai loro discendenti maschi sono vietati l'ingresso e il soggiorno nel territorio nazionale.

I beni, esistenti nel territorio nazionale, degli ex re di Casa Savoia, delle loro consorti e dei loro discendenti maschi, sono avvocati allo Stato. I trasferimenti e le costituzioni di diritti reali sui beni stessi, che siano avvenuti dopo il 2 giugno 1946, sono nulli.

Debates:

18.09.1946	Vol. VII	pp. 1019-1033	S2
28.11.1946	Vol. VI	pp. 727-736	S1
29.11.1946	Vol. VI	pp. 737-746	S1
19.12.1946	Vol. VIII	pp. 1739-1749	S2i
19.12.1946	Vol. VI	pp. 807-814	S1
01.02.1947	Vol. VI	pp. 294-299	AP
05.12.1947 pm	Vol. V	pp. 4417-4452	CA

XIV. (IV)

I titoli nobiliari non sono riconosciuti.

I predicati di quelli esistenti prima del 28 ottobre 1922 valgono come parte del nome.

L'Ordine mauriziano è conservato come ente ospedaliero e funziona nei modi stabiliti dalla legge

La legge regola la soppressione della Consulta araldica.

Debates:

24.09.1946	Vol. VI	pp. 401-413	S1
25.09.1946	Vol. VI	pp. 415-421	S1
25.01.1947	Vol. VI	pp. 177-180	AP
30.01.1947	Vol. VII	pp. 1727-1736	S2
01.02.1947	Vol. VI	pp. 299-300	AP
08.03.1947	Vol. I	pp. 259-285	CA
13.03.1947	Vol. I	pp. 359-391	CA
18.03.1947 pm	Vol. I	pp. 479-502	CA
05.12.1947 pm	Vol. V	pp. 4417-4452	CA

XV.

Con l'entrata in vigore della Costituzione si ha per convertito in legge il decreto legislativo luogotenenziale 25 giugno 1944, n. 151, sull'ordinamento provvisorio dello Stato.

Debates:

05.12.1947 pm	Vol. V	pp. 4417-4452	CA
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XVI.

Entro un anno dall'entrata in vigore della Costituzione si procede alla revisione e al coordinamento con essa delle precedenti leggi costituzionali che non siano state finora esplicitamente o implicitamente abrogate.

Debates:

22.12.1947 am	Vol. V	pp. 4579-4595	CA
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XVII.

L'Assemblea Costituente sarà convocata dal suo Presidente per deliberare, entro il 31 gennaio 1948, sulla legge per la elezione del Senato della Repubblica, sugli statuti regionali speciali e sulla legge per la stampa.

Fino al giorno delle elezioni delle nuove Camere, l'Assemblea Costituente può essere convocata, quando vi sia necessità di deliberare nelle materie attribuite alla sua competenza dagli articoli 2, primo e secondo comma, e 3, comma primo e secondo, del decreto legislativo 16 marzo 1946, n. 98.

In tale periodo le Commissioni permanenti restano in funzione. Quelle legislative rinviando al Governo i disegni di legge, ad esse trasmessi, con eventuali osservazioni e proposte di emendamenti.

I deputati possono presentare al Governo interrogazioni con richiesta di risposta scritta.

L'Assemblea Costituente, agli effetti di cui al secondo comma del presente articolo, è convocata dal suo Presidente su richiesta motivata del Governo o di almeno duecento deputati.

Debates:

12.12.1947 am	Vol. V	pp. 4485-4496	CA
12.12.1947 pm	Vol. V	pp. 4497-4508	CA
20.12.1947 am	Vol. V	pp. 4543-4558	CA
20.12.1947 pm	Vol. V	pp. 4559-4564	CA

XVIII. (IX)

La presente Costituzione è promulgata dal Capo provvisorio dello Stato entro cinque giorni dalla sua approvazione da parte dell'Assemblea Costituente ed entra in vigore il 1 gennaio 1948.

Il testo della Costituzione è depositato nella sala comunale di ciascun Comune della Repubblica per rimanervi esposto, durante tutto l'anno 1948, affinché ogni cittadino possa prenderne cognizione.

Debates:

11.09.1946	Vol. I	p. 52	AP
20.12.1947 am	Vol. V	pp. 4543-4558	CA